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RECORDATION NO. FILED 1426

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INTERSTATE COMMERCE COMMISSION

12639-A

RECORDATION NO. FILED 1426

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INTERSTATE COMMERCE COMMISSION

December 22, 1980

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INTERSTATE COMMERCE COMMISSION

The Canadian Wheat Board
Lease Financing Dated as of September 15, 1980

[CS&M Ref. 2044-064B]

Blue Covers

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. § 11303(a), I enclose here-with on behalf of The Canadian Wheat Board, for filing and recordation, counterparts of the following:

(1) (a) Conditional Sale Agreement dated as of September 15, 1980, between First Security Bank of Utah, N.A., and National Steel Car Limited; and

(b) Agreement and Assignment dated as of September 15, 1980, between Mercantile-Safe Deposit and Trust Company and National Steel Car Limited.

(2) Lease of Railroad Equipment dated as of September 15, 1980, between The Canadian Wheat Board and First Security Bank of Utah, N.A.

The addresses of the parties to the aforementioned agreements are:

Trustee-Lessor-Vendee:

First Security Bank of Utah, N.A.
79 South Main Street,
Salt Lake City, Utah 84111.

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Builder-Vendor:

National Steel Car Limited
Post Office Box 450
Hamilton, Ontario L8N 3J4
CANADA.

Lessee:

The Canadian Wheat Board
423 Main Street
Winnipeg, Manitoba R3C 2P5

Agent-Assignee

Mercantile-Safe Deposit and Trust Company
Two Hopkins Plaza
Baltimore, Maryland 21201.

The equipment covered by the aforementioned agreements consists of 275 covered hopper cars bearing the road numbers of the Lessee CPWX605827 through CPWX606101, and also bearing the legend "Owned by a Bank or Trust Company. Ownership Subject to a Conditional Sale Agreement filed with the Interstate Commerce Commission".

Enclosed is our check for \$100 for the required recordation fee. Please accept for recordation one counterpart of each of the enclosed agreements, stamp the remaining counterparts with your recordation number and return them to the delivering messenger along with your fee receipt addressed to the undersigned.

Very truly yours,

Roger D. Turner
Roger D. Turner
As Agent for The Canadian Wheat
Board

Agatha Mergenovich, Secretary,
Interstate Commerce Commission,
Washington, D. C. 20423.

Encl.

12639
REGISTRATION NO. _____ Filed 1428

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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of September 15, 1980

Between

FIRST SECURITY BANK OF UTAH, N.A.,
as Trustee

and

NATIONAL STEEL CAR LIMITED

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CONDITIONAL SALE AGREEMENT dated as of September 15, 1980, between NATIONAL STEEL CAR LIMITED, a Canadian corporation (the "Vendor" or the "Builder" as more particularly set forth in Article 1 hereof), and FIRST SECURITY BANK OF UTAH, N.A., not individually but solely in its capacity as Trustee (the "Vendee"), under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with Mercantile-Safe Deposit and Trust Company (the "Assignee" or the "Vendor") and A. L. McCormick (the "Owner").

The Builder agrees to construct, sell and deliver to the Vendee, and the Vendee agrees to purchase, the railroad equipment described in Annex B hereto (the "Equipment").

The Vendee is entering into a lease dated as of the date hereof with The Canadian Wheat Board, a body corporate acting as agent of Her Majesty in right of Canada (the "Lessee"), substantially in the form annexed hereto as Annex C (the "Lease").

The Assignee is acting as agent under a Participation Agreement dated as of the date hereof (the "Participation Agreement"), among the Assignee, the Owner, the Lessee, the Vendee and Morgan Guaranty Trust Company of New York (the "Investor").

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Assignment; Definitions. The parties hereto contemplate that the Vendee will furnish that portion of the Purchase Price (as hereinafter defined) for the Equipment as is required under subparagraph (a) of the third paragraph of Article 4 hereof and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Assignee pursuant to an Agreement and Assignment dated as of the date hereof between the Builder and the Assignee (the "Assignment").

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder,

the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

In case of such assignment, the Vendee will enter into the Lease with the Lessee to provide, among other things, for the payment and performance of all the Vendee's obligations hereunder.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the Equipment at its plant described in Annex B hereto, and the Builder will sell and deliver to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendee and the Lessee (which specifications and modifications, if any, are hereinafter called the "Specifications"). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture thereof, to all Department of Transport (Canada), United States Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as then being applicable to each such unit of Equipment, and each such unit will be new railroad equipment.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Vendee at the place or places specified in Annex B hereto, freight and storage charges, if any, prepaid and included in the Purchase Price (as hereinafter defined), in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that delivery of any unit of the Equipment shall not be made until the Builder shall have been

notified by the Assignee or its counsel that the conditions (including the receipt of opinions of counsel as to the necessary filing and recording of documents) contained in Paragraph 7 of the Participation Agreement have been met or waived and the Builder shall have been notified by the Vendee or its counsel that the conditions contained in Paragraph 8 of the Participation Agreement have been met or waived; and provided further that the Builder shall not have any obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clause (c) of Article 15 hereof or the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default. The Builder agrees not to deliver any unit of Equipment hereunder following receipt of written notice from the Vendee or the Assignee (a) of the commencement of any such proceedings or the occurrence of any such event, as aforesaid, or (b) that any of the conditions contained in Paragraph 7 or 8 of the Participation Agreement have not been met or waived. The Builder's forbearance so to deliver shall not in any way adversely affect the rights of the Builder.

Any Equipment not delivered at the time of receipt by the Builder of the notice specified in the second sentence of the first paragraph of this Article 3 and any Equipment not delivered and accepted hereunder on or prior to December 31, 1980, shall be excluded from this Agreement, and the Vendee shall be relieved of its obligation to purchase and pay for such Equipment. If any Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the Builder and the Vendee shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom; and pursuant to the Participation Agreement the Lessee has agreed to purchase such excluded Equipment and any Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof from the Builder thereof as provided in Paragraph 1 of the Participation Agreement.

The Builder's obligation as to the time of delivery set forth in Annex B is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including, but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, lockouts, differences with workmen, accidents, fire, flood, explosion, damage to plant,

equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees or agents of the Lessee), and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect the materials used in the construction of its Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be an employee or agent of the Lessee) shall execute and deliver to the Builder a certificate of acceptance (the "Certificate of Acceptance"), substantially in the form of Schedule D to the Lease; provided, however, that the Builder shall not thereby be relieved of its warranties set forth or referred to in Article 13 hereof.

On delivery and acceptance of each such unit hereunder at the place specified for delivery, the Builder shall not have any further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranties set forth or referred to in Article 13 hereof.

Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the delivery to and acceptance by or on behalf of the Vendee of any unit of Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof shall be ineffective, ab initio, to create in or transfer to the Vendee any legal or beneficial right or interest in such unit or (except as provided in the first paragraph of Article 4 hereof) to impose on the Vendee any liability, obligation or responsibility with respect thereto; any right or interest in any such unit created in or transferred to, or purported to be created in or transferred to, the Vendee shall be held by the Vendee solely as trustee for the benefit of the Lessee.

ARTICLE 4. Purchase Price and Payment. The base

price or prices per unit of the Equipment are set forth in Annex B hereto and are subject to such increase or decrease as may be agreed to by the Builder, the Vendee and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased as set forth in the invoice or invoices of the Builder delivered to the Vendee, including any increase pursuant to the presentation of a supplemental invoice as hereinafter provided; provided, however, that for all purposes of this Agreement other than for the purpose of determining the amount payable to the Builder pursuant to subparagraph (a) of the third paragraph of this Article 4, the term Purchase Price shall be deemed to mean the amount specified in the Builder's invoice or invoices but expressed in United States dollars based on the actual cost to the Vendee and the Assignee of the Canadian dollars used to make the payments to the Builder pursuant to subparagraph (a) of the third paragraph of this Article 4 and Section 4 of the Assignment; provided further, however, that the Purchase Price of each unit of Equipment delivered, accepted and settled for under this Agreement shall be deemed to be the average Purchase Price of all such units. If the unit price specified in any invoice is greater than the base price set forth in Annex B, or if any increase in price pursuant to a supplemental invoice would cause the Purchase Price of any unit to be greater than such base price, such invoice or supplemental invoice, as the case may be, shall be accompanied by, or have endorsed thereon, the agreement or approval of the Lessee and the Vendee. If on any Closing Date (as hereinafter defined in this Article) the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made under this Agreement would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as the Vendee may at its option agree to prior to delivery of any unit or units of Equipment that, but for such agreement, would be excluded from this Agreement), the Builder (and any assignee of the Builder) and the Vendee will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee as will, after giving effect to such exclusion, reduce such aggregate Purchase Price under this Agreement to not more than the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as aforesaid); provided, however, that for the purposes of this sentence the term "aggregate Purchase Price"

shall be deemed to include the maximum increase in the Purchase Price of Equipment for which settlement has theretofore and is then being made under this Agreement which would be permitted under the proviso to the last sentence of the third paragraph of this Article 4. The Vendee shall take such other steps, including the execution of instruments of transfer, as may be reasonably requested by the Lessee for the purpose of acknowledging and perfecting the interest of the Lessee in any unit of Equipment so excluded from this Agreement, and the Vendee shall have no further obligation or liability in respect of units so excluded.

The Equipment shall be settled for in such number of groups of units of the Equipment delivered to and accepted by the Vendee as is provided in Item 2 of Annex A hereto (each such group being hereinafter called a "Group"). The term "Closing Date" with respect to any Group shall mean such date or dates (not later than December 31, 1980, such later date being herein called the "Cut-Off Date"), occurring not more than five business days following presentation by the Builder to the Vendee of the invoices and of the Certificate or Certificates of Acceptance for the Equipment and written notice thereof by the Builder to the Lessee, as shall be fixed by the Builder by written notice delivered to the Vendee and the Assignee at least 10 business days prior to the Closing Date designated therein, and such term shall also include the date fixed for settlement in respect of the Final Supplemental Invoice (as hereinafter defined). The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Baltimore, Maryland, New York, New York, or Salt Lake City, Utah, are authorized or obligated to remain closed.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) not later than 11:00 a.m., New York City time, on each Closing Date an amount equal to 27.43826% of (i) the Purchase Price of the Equipment then being settled for, or (ii) in the case of an increase in the Purchase Price of any Equipment pur-

suant to a supplemental invoice as hereinafter provided for, the amount of such increase; and

(b) in 40 semiannual installments, as hereinafter provided, an amount equal to 72.56174% of the applicable amount referred to in the foregoing clause (i) or (ii), as the case may be.

In the event that on any Closing Date the final Purchase Price of any Group has not been determined, the invoice presented may be for an estimated Purchase Price (as evidenced by the words "Interim Invoice" written on the face of such invoice), subject to adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the Builder at least 10 days prior to any subsequent Closing Date for settlement on such subsequent Closing Date for any increase in the Purchase Price; provided, however, that in no event shall the increase in the Purchase Price of any unit pursuant to a supplemental invoice exceed 2.5% of the estimated Purchase Price as specified in an Interim Invoice. One final supplemental invoice (the "Final Supplemental Invoice") may be presented by such Builder after the last Closing Date on which a Certificate or Certificates of Acceptance is presented for the last Group of Equipment provided by such Builder; provided, however, that the Final Supplemental Invoice may only be presented on or prior to the Cut-Off Date, and that the notation "Final Supplemental Invoice" shall appear on the face thereof. The settlement in respect of the Final Supplemental Invoice shall occur on such date (not later than the Cut-Off Date), occurring not more than 5 business days following presentation by the Builder to the Vendee of the Final Supplemental Invoice and written notice thereof by the Builder to the Lessee, as shall be fixed by the Builder by written notice delivered to the Vendee and the Assignee at least 10 business days prior to the settlement date designated therein.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (the "Conditional Sale Indebtedness") shall be payable in 40 consecutive semiannual installments on each January 2 and July 2, commencing July 2, 1981, to and including January 2, 2001 (or if any such date is not a business day, on the next succeeding business day), each such date being hereinafter called a "Payment Date". The installment of principal payable on each Payment Date shall be calcu-

lated so that the amount thereof shall be substantially in proportion to the amount of principal set forth in Schedule I hereto for such Payment Date, and the aggregate of such installments of principal will completely amortize the Conditional Sale Indebtedness. The Vendee will furnish or cause to be furnished to the Vendor and the Lessee promptly after the last Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the amount of principal payable on each Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from and including the Closing Date in respect of which such indebtedness was incurred at a rate per annum equal to the rate of interest publicly announced by the Investor from time to time as its Prime Rate (the "Prime Rate") for all periods through January 1, 1982; at the Prime Rate plus 1% for all periods commencing after January 1, 1982, and ending on or before July 1, 1982; and at the Prime Rate plus 5% for all periods commencing after July 1, 1982 (the interest rate applicable from time to time under this sentence being hereinafter called the "Floating Prime Rate"). The rate of interest payable hereunder shall change simultaneously with each change in the Prime Rate. Such interest shall be payable, to the extent accrued, on January 2, 1981, and on each Payment Date thereafter; provided, however, that the amount of interest payable on any January 2 may, at the option of the Vendee, be prepaid on the last business day of the next preceding calendar year. The interest rates provided for in this paragraph are the ones initially agreed upon. In connection with arrangements for permanent financing as contemplated by the second paragraph of Paragraph 2 of the Participation Agreement, the interest rates herein provided may be amended.

Interest under this Agreement shall be determined on the basis of a 360-day year of 12 30-day months. Each rate of interest determined with respect to any period pursuant to the preceding paragraph expressed for the purpose of the Interest Act (Canada) as a calendar year rate per annum is equivalent to such rate as so determined multiplied by the fraction (i) the numerator of which shall be the actual number of days in the then current calendar year multiplied by the number of days in such period, assuming that each whole month which shall have elapsed in such period shall be comprised of 30 days and (ii) the denominator of which shall be the actual number of days in such period multiplied by 360.

The Vendee will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof at the rate of 1% per annum over the Floating Prime Rate.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts except that payments under subparagraph (a) of the third paragraph of this Article 4 shall be made in Canadian dollars. Except as provided in Articles 7 and 15 hereof, the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 15 and 16 hereof) but not limiting the effect of Article 21 hereof, the liability of the Vendee or any assignee of the Vendee for all payments to be made by it under and pursuant to this Agreement, including any liability arising out of or in connection with the performance of its obligations hereunder and excluding only the obligations set forth in the proviso in the third paragraph of Article 12 hereof and the payments to be made pursuant to subparagraph (a) of the third paragraph of this Article, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment"; provided, however, that nothing in this or the next succeeding sentence shall be deemed to limit in any way the agreements, obligations or liabilities of the Owner under the Guaranty Agreement dated as of September 15, 1980, between the Owner and the Agent. In addition, the Vendor agrees that the Vendee (i) makes no representation or warranty with respect to, and is not responsible for, the due execution, validity or enforceability of the Lease (or any document relating thereto) insofar as it relates to the Lessee or to any of the Lessee's obligations thereunder and (ii) shall not be responsible for the performance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment and to the Vendor's rights under the Lease against the Lessee and the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee or any assignee of the Vendee at any time after any such event and during the continuance

thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences or a Termination (as such terms are defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 10 or any other provision of the Lease and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee or any assignee of the Vendee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences or a Termination) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include (A) amounts referred to in the foregoing clauses (a) and (b) received by the Vendee or any assignee of the Vendee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences or a Termination) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Vendee or any assignee of the Vendee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease or (B) amounts payable by the Lessee to the Owner or to the Vendee in its individual capacity pursuant to § 6, 9 or 15 of the Lease. Notwithstanding anything to the contrary contained in Article 15 or 16 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, it will limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph. Nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder.

ARTICLE 5. Security Interest in the Equipment.

The Vendor shall and hereby does retain a security interest in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Lessee as provided in this Agreement and the Lease.

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a) execute a bill or bills of sale for the Equipment releasing its property and security interest therein to the Vendee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address referred to in Article 20 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 6. Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense

to the Vendor with respect to the amount of any Taxes (as defined in § 6 of the Lease) (other than gross receipt taxes [except gross receipt taxes in the nature of or in lieu of sales or use or rental taxes], taxes measured by net income, excess profits taxes and similar taxes) hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which Taxes the Vendee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Vendee will also pay promptly all Taxes which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Vendor solely by reason of its ownership thereof (except as provided above) and will keep at all times all and every part of the Equipment free and clear of all Taxes which might in any way affect the security interest of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any Taxes of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such Taxes and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest or property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any Taxes shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any Taxes so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved in writing the payment thereof. Nothing in this Article 6 shall be deemed to imply an obligation on the part of the Vendee to file any tax returns or reports on behalf of the Builder or the Assignee.

ARTICLE 7. Maintenance, Termination and Casualty Occurrences. The Vendee shall, at its own cost and expense, maintain and keep each unit of the Equipment in good operating order, repair and condition, ordinary wear and tear excepted, and eligible for railroad interchange in accordance with the interchange rules of the Association of American

Railroads and/or the rules of any governmental agency or other organization with jurisdiction, if applicable.

In the event that the Lease is terminated pursuant to the ninth and succeeding paragraphs of § 7 of the Lease (a "Termination") or any unit of the Equipment shall suffer a Casualty Occurrence (as defined in § 7 of the Lease), the Vendee shall, promptly after it shall have received notice from the Lessee or has otherwise been informed of a Termination or that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the Casualty Payment Date (as defined in § 7 of the Lease) relating to such Casualty Occurrence or on the Termination Date (as defined in § 7 of the Lease) in the case of a Termination (each such date being hereinafter called a "Settlement Date"), the Vendee shall pay to the Vendor (i) in the case of a Casualty Occurrence, a sum equal to the Casualty Value (as hereinafter defined in this Article 7) of such unit suffering a Casualty Occurrence as of such Settlement Date and (ii) in the case of a Termination, a sum equal to the Termination Value (as hereinafter defined in this Article 7) of such unit subject to such Termination as of such Settlement Date. The Vendee shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit or the Termination Value of such unit, as the case may be. Any money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of the interest and principal due on such date) on the date of such payment to prepay (without penalty or premium), ratably in accordance with the unpaid balance of each installment, the Conditional Sale Indebtedness, together with all interest accrued on the portion of the Conditional Sale Indebtedness being prepaid. The Vendee will promptly furnish or cause to be furnished to the Vendor and the Lessee a revised schedule of payments of principal thereafter to be made, in such number of counterparts as the Vendor may request.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (after giving effect to the scheduled payment of principal and interest due and made on such date, but without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any

other unit), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph and the next succeeding paragraph hereof, each payment of the Purchase Price made pursuant to Article 4 hereof shall be deemed to be a payment with respect to each unit of Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of all the Equipment.

The Termination Value of any unit shall be equal to the Casualty Value thereof.

Upon payment by the Vendee to the Vendor (i) of the Casualty Value of any units of the Equipment having suffered a Casualty Occurrence or (ii) of the Termination Value of the units in connection with a Termination, absolute right to the possession of, title to and property in such units shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee of all the Vendor's right, title and interest, and the release of the Vendor's security interest, in such units, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such units.

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall, subject to the Vendor having received payment of the Casualty Value hereunder, pay such insurance proceeds or condemnation payments to the Vendee. All insurance proceeds or condemnation payments received by the Vendor in respect of any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

ARTICLE 8. Reports and Inspections. On or before May 31 in each year, commencing with the year 1981, the Vendee shall cause to be furnished to the Vendor an accurate statement to the effect set forth in § 8 of the Lease. The Vendor shall have the right, by its agents, to inspect the Equipment and to discuss the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 9. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered and marked as provided in § 5 of the Lease. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, obliterated, defaced or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names, trademarks, initials or other insignia customarily used by the Lessee or its affiliates or any long-term operator or sublessee permitted under § 12 of the Lease to the extent provided in the proviso in the last paragraph of § 5 of the Lease.

ARTICLE 10. Compliance with Laws and Rules. During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all Applicable Laws (as defined in § 9 of the Lease), and in the event that any such Applicable Laws require any alteration, replacement or modification of or to any part of any unit of the Equipment, the Vendee will conform therewith at its own expense; provided, however, that the Vendee or the Lessee may, in good faith, contest the validity or application of any such Applicable Laws in any reasonable manner which does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Possession and Use. The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the

Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The parties hereto acknowledge that the Vendee simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall, subject to the provisions of the last paragraph of § 4 of the Lease and the second paragraph of § 12 of the Lease, be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

ARTICLE 12. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Vendee's interest in the Lease and the payments to be made thereunder, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

The foregoing provisions of this Article 12 shall be subject to the limitations set forth in the last paragraph of Article 4 hereof and the provisions of Article 21 hereof; provided, however, that the Vendee will pay or

discharge any and all taxes, claims, liens, charges or security interests claimed by any party from, through or under the Vendee or (to the extent it receives funds for such purpose) the Owner, or their successors or assigns, not arising out of the ownership of the Equipment or the transactions contemplated hereby (but, to the extent it receives funds for such purpose, including income taxes arising out of the receipt of rentals and other payments under the Lease and any other proceeds from the Equipment), which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Vendee's interest in the Lease and the payments to be made thereunder; but the Vendee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement or in and to the Lease and the payments to be made thereunder.

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Builder and the Assignee and their successors, assigns, agents and servants from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, penalties and interest, arising out of or as the result of the occurrence of a default or an event of default under this Agreement, the ownership, ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, the compliance or noncompliance by the Lessee with any applicable law, rule or regulation with respect to the use, maintenance or operation of any of the Equipment, or any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when title thereto, the property or a security interest therein remains in the Vendor; provided, however, that the Vendee shall not be required to indemnify the Builder against any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder, and the

Vendee shall not be required to indemnify the Assignee in respect of the Assignee's wilful misconduct or negligence or in respect of any breach by the Assignee hereunder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the release of the security interest in, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder (except as provided in Article 21 hereof) in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The Builder represents and warrants to the Vendee that at the time of delivery and acceptance of each unit of Equipment under this Agreement, the Builder will have good title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except (i) any claims, liens, security interests or other encumbrances created by any person other than the Builder or any of its affiliates, after such unit has been handed over by the Builder to Canadian National Railway Company ("CNR") at the storage area at the Builder's plant pursuant to the Bailment Agreement dated September 18, 1980, between the Builder and CNR (the "Bailment Agreement"), and (ii) the rights of any of the parties under the Participation Agreement and all Exhibits and Annexes thereto.

The Builder represents that it is not entering into this Agreement, or entering into any assignment of this Agreement, directly or indirectly in connection with any arrangement or understanding in any way involving any employee benefit plan (other than a governmental plan) with respect to which it is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974, as amended.

The agreement of the parties relating to the Builder's warranty of material and workmanship and the agreement of the parties relating to patent indemnification are set forth in Items 3 and 4 of Annex A hereto.

ARTICLE 14. Assignments. The Vendee will not,

except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment or sell, assign, transfer or otherwise dispose of its rights under this Agreement without the prior written consent of the Vendor, except as provided in the Trust Agreement.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Article 13 hereof, or relieve the Vendee of its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 hereof, Annex A hereto and this Article 14, or any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee and the Lessee, together with a counterpart or copy of such assignment, stating the identity and post-office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct. The Vendee may rely upon documents received pursuant to this paragraph believed by it in good faith to be true and authentic.

The Vendee recognizes that this Agreement will be assigned to the Assignee as provided in the Assignment. The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be

assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee or the Lessee, as the case may be, against and only against the Builder.

ARTICLE 15. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) and such default shall continue for 10 business days after the date such payment is due and payable; or

(b) the Vendee (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) or the Lessee shall, for more than 30 days after the Vendor shall have demanded, in a writing addressed to the Vendee and the Lessee, performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) any proceeding shall be commenced by or against the Owner or the Vendee for any relief which includes, or might result in, any modification of the obligations of the Vendee hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or

extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Vendee under this Agreement or of the Owner under the Trust Agreement, as the case may be, shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee or the Owner, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(d) the Vendee shall make or permit any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment and the Vendee shall, for more than 30 days after demand in writing by the Vendor, fail to secure a reassignment or retransfer to the Vendee of such Agreement, interest or right; or

(e) an Event of Default shall have occurred under the Lease; provided, however, that an Event of Default under clause (a) of § 10 of the Lease shall not be deemed to be an event of default hereunder if within 10 business days after the occurrence of such Event of Default the Vendee shall make payment of all amounts in default under subparagraph (a) of this Article;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee, the Owner and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, declare (a "Declaration of Default") the entire unpaid Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of

such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. In addition, if the Vendee does not pay the entire unpaid Conditional Sale Indebtedness, together with the interest thereon accrued and unpaid to the date of payment, within 15 days of such notice of Declaration of Default, the Vendor may (subject to the proviso in the second paragraph of § 4 of the Lease relating to termination and to the Lessee's rights of possession, use and assignment under §§ 4 and 12 of the Lease) cause the Lease immediately, upon written notice to the Vendee, to terminate, but the Lessee shall remain liable as therein provided. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee, subject to the provisions of Articles 4 and 21 hereof, wherever situated. The Vendee shall promptly notify the Vendor of any event of which it has knowledge which constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement. Knowledge of the Vendee shall mean actual knowledge of an officer or employee of its Corporate Trust Department.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 16. Remedies. Subject to the Lessee's rights of quiet enjoyment, possession, use and assignment under §§ 4 and 12 of the Lease at any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notice, if any, as may be required

for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee or any other person and for such purpose may enter upon the premises of the Vendee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee, subject to all mandatory requirements of due process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, causing prompt telegraphic and written notice to be given to the Association of American Railroads and all railroads to which any unit or units of the Equipment have been interchanged to return the unit or units so interchanged) cause the Equipment to be placed upon such storage tracks as the Vendor reasonably may designate;

(b) permit the Vendor to store the Equipment on such tracks at the risk of the Vendee without charge for rent or storage until the Equipment has been sold, leased or otherwise disposed of by the Vendor; and

(c) cause the Equipment to be transported to (i) any reasonable place in Canada on any lines of a Canadian railway or to the point of interconnection with any connecting carrier for shipment, or (ii) any reasonable place in the United States on any lines of CNR or Canadian Pacific Limited or any of their respective affiliates which is not more than 100 miles from the border between the United States and Canada, all as directed by the Vendor.

During any storage period, the Vendee will, at its own cost and expense, insure, maintain and keep each such unit in good order and repair and will permit the inspection of the

Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and users. This Agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire Conditional Sale Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee, the Owner and the Lessee by telegram or registered mail, addressed as provided in Article 20 hereof, and to any other persons to whom the law may require notice, within 60 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee or for its account may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; provided further that if the Vendee, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. Before making any such sale, lease or other disposition pursuant to the preceding proviso, the Vendor, pursuant to the Trust Agreement, shall

first instruct the Vendee to terminate the Lease if the Event of Default hereunder is caused solely by a default by the Lessee under the Lease. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

Subject to the Lessee's rights of quiet enjoyment, possession, use and assignment under §§ 4 and 12 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Lessee or any other party claiming from, through or under the Vendee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may

determine, so long as such sale shall be in a commercially reasonable manner. The Vendor, the Vendee or the Lessee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Vendee and the Lessee shall be given written notice of such sale not less than 10 days prior thereto, by telegram or registered mail addressed as provided in Article 20 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee and the Vendee to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Vendee or the Lessee (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder. From and after the date of any such sale, the Vendee shall (subject to Article 4 hereof) pay to the Vendor an amount equal to the interest rate on the unpaid Conditional Sale Indebtedness with respect to any such unit which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee or the Lessee shall not otherwise alter or affect the Vendor's rights or the Vendee's obli-

gations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of Article 21 hereof and the last paragraph of Article 4 hereof, be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee.

Subject to the limitations of Article 21 hereof and the last paragraph of Article 4 hereof, the Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. Applicable Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. Recording. The Vendee will (a) cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and as contemplated by Paragraph 7(b) of the Participation Agreement; (b) from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law (including renewals of the filings contemplated by Paragraph 7(b) of the Participation Agreement) or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and (c) promptly furnish or cause to be furnished to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 19. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Except for the Purchase Order (as defined in the Participation Agreement) and the Participation Agreement and its exhibits, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Vendee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Vendee.

ARTICLE 20. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it by first-class mail, postage prepaid, at the following addresses:

(a) to the Vendee, at 79 South Main Street, Salt Lake City, Utah, Attention of Trust Division, Corporate Trust Department,

(b) to the Lessee, at 423 Main Street, Winnipeg, Manitoba R3C 2P5, Attention of Treasurer/Comptroller,

(c) to the Builder, at its address specified in Item 1 of Annex A hereto,

(d) to the Owner, at its address set forth in the Participation Agreement, and

(e) to any assignee of the Vendor, or of the Vendee, at such address as may have been furnished in writing to the Vendee, or the Vendor, as the case may be, and to the Lessee, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 21. Immunities; Satisfaction of Undertakings. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Vendee under the second paragraph of Article 16 and under Articles 3, 7 (other than the second and third sentences of the second paragraph thereof) 8, 9, 10, 12 (other than the proviso to the last paragraph thereof), 13 (other than the first paragraph thereof) and 18 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Vendee shall not have any responsibility

for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Article 15 hereof. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, warranties, undertakings and agreements herein made on the part of the Vendee are made and intended not as personal representations, warranties, undertakings and agreements by First Security Bank of Utah, N.A., or for the purpose or with the intention of binding said bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement; and except in the case of gross negligence or wilful misconduct, in the case of said bank, no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank or the Owner on account of this Agreement or on account of any representation, warranty, undertaking or agreement of the Vendee (except as aforesaid) or the Owner hereunder, either expressed or implied, except for their respective obligations under the proviso to the last paragraph of Article 12 hereof; all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor.

The Vendee agrees that it will not enter into any amendment to or modification of the Trust Agreement except as provided in Article VIII thereof.

ARTICLE 22. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Utah; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing, recording or deposit hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the markings of the units of Equipment.

ARTICLE 23. Execution. This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee pursuant to the Assignment shall be deemed the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Agreement is dated as of the date first above written, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto annexed.

ARTICLE 24. Judgment. (a) If for the purposes of obtaining judgment in any court it is necessary to convert a sum due hereunder in U.S. dollars into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Vendor could purchase U.S. dollars with such other currency on the business day preceding that on which final judgment is given.

(b) The obligation of the Vendee in respect of any sum due from it to the Vendor hereunder shall, notwithstanding any judgment in a currency other than U.S. dollars, be discharged only to the extent that on the business day following receipt by the Vendor of any sum adjudged to be so due in such other currency the Vendor may in accordance with normal banking procedures purchase U.S. dollars with such other currency; if the U.S. dollars so purchased are less than the sum originally due to the Vendor in U.S. dollars, the Vendee agrees, as a separate obligation and notwithstanding any such judgment but subject to the limitations of Article 21 hereof and the last paragraph of Article 4 hereof, to indemnify the Vendor against such loss, and if the U.S. dollars so purchased exceed the sum originally due to the Vendor in U.S. dollars, the Vendor agrees to remit to the Vendee such excess.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date first above written.

NATIONAL STEEL CAR LIMITED,

by

[CORPORATE SEAL]

Vice President

Attest:

Secretary

[CORPORATE SEAL]

Attest:

Marty R. Mally
Authorized Officer

FIRST SECURITY BANK OF UTAH,
N.A., as Trustee as aforesaid,

by

R. D. Schuster
Authorized Officer

ARTICLE 23. Execution. This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee pursuant to the Assignment shall be deemed the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Agreement is dated as of the date first above written, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto annexed.

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IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date first above written.

NATIONAL STEEL CAR LIMITED,

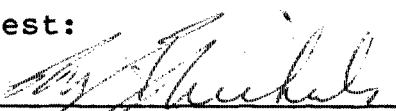
by



Vice President

[CORPORATE SEAL]

Attest:



Secretary

FIRST SECURITY BANK OF UTAH,
N.A., as Trustee as aforesaid,

by

Authorized Officer

[CORPORATE SEAL]

Attest:

Authorized Officer



PROVINCE OF ONTARIO,)
) ss.:
JUDICIAL DISTRICT OF HAMILTON-WENTWORTH,)

On this day of 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of NATIONAL STEEL CAR LIMITED, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Commissioner for Oaths

My Commission expires

STATE OF UTAH,)
) ss.:
CITY OF SALT LAKE,)

On this 15th day of December 1980, before me personally appeared R. D. Schutjer, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, N.A., that one of the seals affixed to the foregoing instrument is the corporate seal of said national banking association that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

Randy R. McInnis
Notary Public

[Notarial Seal]

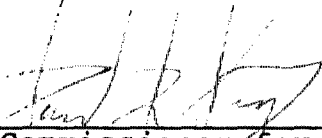
My Commission expires 2-8-82

PROVINCE OF ONTARIO,)

) SS.:

JUDICIAL DISTRICT OF HAMILTON-WENTWORTH,)

On this ~~15th~~ day of ~~DECEMBER~~ 1980, before me personally appeared R. W. COOKE, to me personally known, who, being by me duly sworn, says that he is a Vice President of NATIONAL STEEL CAR LIMITED, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.



Commissioner for Oaths

My Commission expires

PAUL ROBERT KING, a Commissioner, etc.,
in and for the Province of Ontario, for
Campbell, Godfrey & Lewtas,
Barristers & Solicitors. Student-At-Law.
Expires July 31st, 1983.

STATE OF UTAH,)

) SS.:

CITY OF SALT LAKE,)

On this day of 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, N.A., that one of the seals affixed to the foregoing instrument is the corporate seal of said national banking association that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

Notary Public

[Notarial Seal]

My Commission expires

SCHEDULE I

Allocation Schedule of Each
\$1,000,000 of Conditional Sale Indebtedness

<u>Payment Date</u>	<u>Principal Payment</u>	<u>Ending Principal</u>
7/2/81	\$ 1,857.06	\$ 998,142.94
1/2/82	1,973.13	996,169.81
7/2/82	2,096.45	994,073.36
1/2/83	2,227.47	991,845.89
7/2/83	2,366.69	989,479.20
1/2/84	2,514.61	986,964.59
7/2/84	2,671.77	984,292.82
1/2/85	2,838.76	981,454.06
7/2/85	3,016.18	978,437.88
1/2/86	3,204.69	975,233.19
7/2/86	3,404.99	971,828.20
1/2/87	3,617.80	968,210.40
7/2/87	3,843.91	964,366.49
1/2/88	4,084.15	960,282.34
7/2/88	4,339.41	955,942.93
1/2/89	4,610.63	951,332.30
7/2/89	4,898.79	946,433.51
1/2/90	19,506.58	926,926.93
7/2/90	20,725.74	906,201.19
1/2/91	22,021.10	884,180.09
7/2/91	23,397.41	860,782.68
1/2/92	24,859.75	835,922.93
7/2/92	26,413.49	809,509.44
1/2/93	28,064.33	781,445.11
7/2/93	29,818.35	751,626.76
1/2/94	31,682.00	719,944.76
7/2/94	33,662.12	686,282.64
1/2/95	35,766.00	650,516.64
7/2/95	38,001.38	612,515.26
1/2/96	40,376.47	572,138.79
7/2/96	42,900.00	529,238.79
1/2/97	45,581.25	483,657.54
7/2/97	48,430.07	435,227.47
1/2/98	51,456.95	383,770.52
7/2/98	54,673.01	329,097.51
1/2/99	58,090.08	271,007.43
7/2/99	61,720.71	209,286.72
1/2/00	65,578.25	143,708.47
7/2/00	69,676.89	74,031.58
1/2/01	74,031.58	0.00
	<u>\$1,000,000.00</u>	

Annex A

to

Conditional Sale Agreement

- Item 1: National Steel Car Limited, Post Office Box 450, Hamilton, Ontario L8N 3J4.
- Item 2: The Equipment shall be settled for in not more than two Groups of units delivered to and accepted by the Vendee, unless a greater number shall be agreed to by the parties hereto.
- Item 3: The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the CSA to which this Annex is attached (the "Agreement") and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein and workmanship with respect thereto specified by the Lessee and not manufactured by the Builder) and workmanship under normal use and service. The Builder's liability under this Item 3 is limited to making good at its plant any part or parts of any unit of Equipment which shall, within one year after the delivery of such unit of Equipment to the Vendee, be returned to the Builder with transportation charges prepaid and which examination by the Builder shall disclose to its satisfaction to have been thus defective. THE BUILDER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. The rights of the Lessee and the Vendee under the foregoing warranty shall be their sole and exclusive remedy and the Builder will have no liability for lost profits or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties expressed or implied on the part of the Builder, except for its obligations and liabilities under Articles 2, 3, 4 and 13 of this Agreement and Item 4 below. The Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

The Builder further agrees that the Lessee and the Vendee as well as the Builder may to the extent permitted by law take and prosecute claims against vendors of specialties purchased by the Builder for incorporation in the Equipment manufactured by the Builder for the breach of any warranty by the vendors with respect to such specialties. The Builder, the Lessee and the Vendee each agree to notify the others prior to the assertion of any claim by them against any such vendors of specialties. If the Builder determines that it has no interest in any such claim asserted by the Vendee, the Builder agrees to assign to the Lessee and the Vendee, solely for the purpose of making and prosecuting any such claim, all the rights which the Builder has against such vendor for the breach of warranty or other representation respecting the Equipment manufactured by it. The word "specialties" as used herein shall be deemed to include articles, materials, systems, formulae and processes.

The Builder further agrees with the Lessee and the Vendee that neither the inspections provided for in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Vendee of any of its rights under this Item 3.

- Item 4: Except in case of designs, processes or combinations specified by the Lessee and not developed or purported to be developed by the Builder, and articles and materials specified by the Lessee and not manufactured by the Builder, the Builder agrees to indemnify, protect and hold harmless the Lessee, the Vendee and the Owner from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Lessee, the Owner and the Vendee because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, process, combination, article or material infringing or claimed to infringe on any patent or other right. The Lessee, as a condition to its being a third-

party beneficiary hereof, will indemnify, protect and hold harmless the Builder from and against any and all liabilities, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Builder because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, process or combination specified by the Lessee and not developed or purported to be developed by the Builder, or article or material specified by the Lessee and not manufactured by the Builder, which infringes or is claimed to infringe on any patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Lessee every claim, right and cause of action which the Builder has or hereafter shall have against the originator or seller or sellers of any design, process, combination, article or material specified by the Lessee and used by the Builder in or about the construction or operation of the Equipment, or any unit thereof, on the ground that any such design, process, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right, and the Builder further agrees to execute and deliver to the Lessee all and every such further assurances as may be reasonably requested by them more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Lessee, as a condition to its being a third-party beneficiary hereof, will give notice to the Builder of any claim known to the Lessee on the basis of which liability may be charged against the Builder hereunder.

Item 5: The Maximum Purchase Price referred to in Article 4 of the Agreement is U.S. \$12,576,218.

Annex B

to

Conditional Sale Agreement
[McCormick Equipment]

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Road Numbers (Both Inclusive)</u>	<u>Estimated Unit Base Price</u>	<u>Estimated Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
4,550 cu. ft. covered hopper cars	LO	M-1803-D	Hamilton, Ontario	275	CPWX 605827 through CPWX 606101	Can. \$51,000	Can. \$14,025,000	November through December 1980, at Hamilton, Ontario, or at such other location as may be mutually agreed to by the Vendee and the Builder.

ANNEX C
to
Conditional Sale Agreement

LEASE OF RAILROAD EQUIPMENT

Dated as of September 15, 1980

Between

THE CANADIAN WHEAT BOARD,

Lessee,

and

FIRST SECURITY BANK OF UTAH, N.A., as Trustee,

Lessor

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* This Table of Contents has been included in this document for convenience only and does not form a part of, or affect any construction or interpretation of, this document.

LEASE OF RAILROAD EQUIPMENT dated as of September 15, 1980, between THE CANADIAN WHEAT BOARD, a body corporate acting as agent of Her Majesty in right of Canada (the "Lessee"), and FIRST SECURITY BANK OF UTAH, N.A., a national banking association, not individually but solely in its capacity as Trustee (the "Lessor") under a Trust Agreement dated as of the date hereof (the "Trust Agreement").

The Lessor is entering into a conditional sale agreement dated as of the date hereof (the "CSA") with National Steel Car Limited (the "Builder") wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (the "Equipment"). A. L. McCormick (the "Owner") will be the beneficial owner of the Equipment delivered and accepted under the CSA. The Builder is assigning its interest in the CSA to Mercantile-Safe Deposit and Trust Company, acting as agent (said bank acting in such capacity being hereinafter called the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement").

The Lessee desires to lease such number of units of the Equipment as are delivered, accepted and settled for under the CSA (the "Units") and for which Certificates of Acceptance referred to in § 2 hereof are executed and delivered, at the rentals and upon the terms and conditions hereinafter provided.

NOW, THEREFORE, in consideration of the rentals to be paid and the covenants hereinafter contained, the parties hereto hereby agree as follows:

§ 1. Net Lease. This Lease is a net lease. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and the Lessee shall not be entitled to (a) any abatement or reduction of rent, including, but not limited to, abatements or reductions due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under any other agreement, or against the Builder or the Vendor or otherwise or (b)

any setoff against rent, including, but not limited to, any setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under any other agreement or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment required to be made by the Lessee hereunder shall be final, and the Lessee shall not seek to recover all or any part of such payment for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. Each delivery of a Unit to the Lessor under the CSA shall be deemed to be a delivery hereunder to the Lessee at the point or points at which such Unit is delivered to the Lessor under the CSA. Upon such delivery, the Lessee will cause an employee or agent of the Lessee to inspect the same and, if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Lessor under the CSA and itself hereunder and execute and deliver to the Lessor a certificate of acceptance (the "Certificate of Acceptance") in substantially the form of Schedule D hereto, which shall be deemed to form a part hereof, whereupon such Unit shall be deemed to have been delivered

to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, 50 consecutive semiannual payments, payable in arrears, on January 2 and July 2 in each year, commencing July 2, 1981 (each of such 50 dates being hereinafter called a "Rental Payment Date"). The first 17 semiannual payments shall each be in an amount equal to 4.66986% of the Purchase Price (as hereinafter defined) of each Unit then subject to this Lease and the next 33 semiannual payments shall each be in an amount equal to 5.70761% of the Purchase Price of each Unit then subject to this Lease. The term "Purchase Price" as used herein with respect to any Unit shall mean the average of the Purchase Prices of all the Units determined as provided in the first paragraph of Article 4 of the CSA (without regard to the second proviso in such paragraph) and written notice of which Purchase Prices shall have been given by the Lessor to the Lessee: provided, however, that in no event shall such average Purchase Price per Unit exceed U.S. \$45,732 unless the Lessee shall otherwise agree in writing.

The Lessee also agrees to pay as additional rent hereunder the amounts referred to in §§ 6 and 9 hereof and Annex A hereto.

The Lessor and the Lessee agree that if (a) there shall be a difference on any day after the first Closing Date between 12.5% per annum and the rate of interest payable on the Conditional Sale Indebtedness (as defined in the CSA) on such day, (b) at the time of issuance of debt to permanent investors as contemplated by the second paragraph of Paragraph 2 of the Participation Agreement, there shall be a difference between the aggregate principal amount, maturity date or average life of such debt and the aggregate principal amount, maturity date or average life of the Conditional Sale Indebtedness outstanding immediately prior to the issuance of such debt, or (c) the Owner shall make any payment pursuant to the last sentence of the first paragraph of Paragraph 13 of the Participation Agreement, then the rentals payable hereunder and the Casualty Values and Termination Values set forth in Schedules B and C hereto

will be appropriately adjusted upward or downward to preserve the Owner's after-tax economic yields and cash flows (computed on the same assumptions, including tax rates, as were utilized by the Owner in originally evaluating this transaction), it being understood that in the case of the foregoing clause (a) any such upward adjustment shall be in an amount at least sufficient to cover the increased interest cost on the Conditional Sale Indebtedness.

All rental payments payable hereunder shall be in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

If any of the rental payment dates referred to above is not a business day, the rental payment otherwise payable on such date shall then be payable on the next succeeding business day. The term "business day" as used herein means any calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Baltimore, Maryland, New York, New York, or Salt Lake City, Utah, are authorized or obligated to remain closed.

The Lessee agrees to make each payment provided for in this § 3 in funds immediately available at or prior to 11:00 a.m. local time in the city where such payment is due.

Notwithstanding anything to the contrary contained in this Lease, in the event the aggregate of all payments otherwise required to be made under this Lease by the Lessee on or prior to March 31, 1981, shall exceed the equivalent of Can. \$1,375,000, the amount of such excess shall be due and payable on April 1, 1981.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10, 14 and 15 hereof, shall terminate on January 2, 2006. Except for obligations of the Lessee hereunder which are specifically stated to terminate at a fixed time, the obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 3, 6, 7, 9, 13 and 15 hereof) shall survive the expiration of the term of this Lease.

So long as no Event of Default exists hereunder, this Lease may not be terminated (other than pursuant to § 7 hereof) and the Lessee shall be entitled to the rights of quiet enjoyment, possession, use and assignment provided under § 12 hereof. The Lessee acknowledges that upon the occurrence of an Event of Default hereunder, the Vendor may exercise all the rights and remedies provided in the CSA.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words, "OWNED BY A BANK OR TRUST COMPANY. OWNERSHIP SUBJECT TO A CONDITIONAL SALE AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words designated or approved by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law or reasonably requested in order to protect the Lessor's and the Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and of the Vendor under the CSA. The Lessee will not place or permit any such Unit to be placed in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace or cause to be replaced promptly any words which may be removed, defaced, obliterated or destroyed. The Lessee will not change or permit to be changed the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect that such statement has been so filed and deposited, that such filing and deposit will protect the Vendor's and the Lessor's rights in such Units and that no other filing, deposit or giving of notice with or to any Canadian or United States Federal, state, provincial or local government or agency thereof is necessary to protect the rights of the Vendor and the Lessor in such Units.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may permit the Equipment to be lettered with the names, trademarks, initials or other insignias customarily used by the Lessee or its affiliates or any long-term operator or sublessee permitted under § 12 hereof on railroad equipment used by it of the same or a similar type for convenience of identification of its rights to use the Equipment under this Lease, and the Equipment may be lettered in an appropriate manner for convenience of identification of the interest of the Lessee therein.

§ 6. Taxes. (a) Indemnity. The Lessee agrees that, notwithstanding the last sentence of this paragraph, each rental or other payment hereunder (including, without limitation, any indemnity payable under § 15 hereof) shall be free of all withholdings of any nature whatsoever, and that in the event any withholding is required, the Lessee shall pay an additional amount such that the net amount of rental actually received by the Lessor free of withholding will equal the amount of rental then due absent such withholding. In addition, unless excused pursuant to the provisions of paragraph (b) of this § 6, the Lessee agrees to pay and, on written demand, to indemnify and hold the Lessor (in both its individual and fiduciary capacities and including for the purposes of this § 6 the Trust Estate (as defined in the Trust Agreement)) and the Owner (the "Indemnitees") harmless from, all license and registration fees and all taxes, levies, imposts, duties, charges or withholdings of any nature whatsoever together with any penalties, fines or interest thereon (hereinafter collectively referred to as "Taxes") imposed against any Indemnatee, the Lessee, the Units or any portion thereof by any Federal, state or local government or taxing authority in the United States or by any foreign government or governmental subdivision thereof or any taxing authority thereof (including, without limitation, Canadian deemed disposition taxes), if any, upon or with respect to the Units or any portion thereof, or upon or with respect to the purchase, ownership, delivery, leasing, possession, use, operation, return or other disposition thereof prior to the return (after any storage period) of the Units to the Lessor after the expiration or termination (other than pursuant to § 10 hereof) of this Lease, or upon or with respect to the rentals, receipts or earnings arising therefrom including interest and principal payable

on the Conditional Sale Indebtedness, or upon or with respect to this Lease, the CSA, the Participation Agreement, the Trust Agreement, the Assignment (as defined in the CSA), the Conditional Sale Indebtedness or the issuance, acquisition or subsequent transfer of the Conditional Sale Indebtedness, unless, and only to the extent that, any such Tax which is not imposed by way of withholding is being contested in good faith by the Lessee or such Indemnatee pursuant to paragraph (c) of this § 6 (and for the payment of which adequate reserves have been provided or other arrangements satisfactory to the Lessor have been made) by appropriate proceedings so long as such proceedings do not involve any danger of the sale, forfeiture or loss of the Units or any interest therein and do not, in the opinion of the Lessor, adversely affect the property or rights of the Lessor hereunder or of the Vendor under the CSA. The Lessee further agrees that, with respect to any payment or indemnity hereunder other than any payment of or indemnity for Canadian withholding taxes, such payment or indemnity shall include any amount necessary to hold the Indemnatee harmless, on an after-tax basis, from all Taxes required to be paid by such Indemnatee with respect to such payment or indemnity under the laws of any Federal, state or local government or taxing authority or under the laws of any foreign government or any taxing authority or governmental subdivision or taxing authority of a foreign country.

(b) Limitation on Indemnity. Notwithstanding the provisions of paragraph (a) of this § 6, the Lessee shall have no obligation thereunder as to:

(1) any Taxes on, based on or measured by the net income of any Indemnatee imposed (i) by the United States of America, (ii) by the state or local government or other local taxing authority having geographical jurisdiction over the place in which such Indemnatee has its principal office or (iii) by any foreign government or any taxing authority or governmental subdivision of a foreign country to the extent allowed as a credit against income taxes imposed by the United States of America taking into account any applicable limitation on the aggregate amount of such credit and after assuming that all other Taxes of such Indemnatee for the same or prior periods which qualify for such credit are first allowed;

(2) any Taxes on, based on, or measured by, any fees or compensation received by the Lessor or the Vendor for their respective services rendered in connection with the transactions contemplated hereby;

(3) any Taxes included in the Purchase Price;

(4) any Taxes on, based on or measured by the net income of any Indemnatee imposed by any foreign government or any taxing authority or governmental subdivision of a foreign country by virtue of such Indemnatee's being engaged in business in such foreign country through activities unrelated to the transactions contemplated by the Participation Agreement, to the extent the Lessee's obligation as to such Taxes would otherwise exceed the amount of withholding taxes which would be payable if such Indemnatee were not so engaged in such business; or

(5) any Taxes on, based on or measured by the net income of the Trust Estate if and to the extent that such Taxes are in substitution for or reduce Taxes payable by the Owner which the Lessee has not agreed to pay or indemnify against pursuant to this § 6;

provided, however, that, notwithstanding the foregoing subparagraphs (1) through (5), there shall not be excluded any Taxes imposed by any jurisdiction on, based on, or measured by, net income resulting directly or indirectly (whether by inclusion of an item in gross income, disallowance of a credit against tax, disallowance of a deduction for depreciation or otherwise) from (x) the Lessee's receipt of or right to receive any refund or credit from the Builder with respect to the Units, or (y) any additional amount of indemnity paid by the Lessee pursuant to the last sentence of paragraph (a) of this § 6; provided further, however, that if an indemnification payment is made pursuant to this § 6, the Lessee shall be entitled to offsetting tax benefits realized by the Owner which correspond to those described in the second, third and fifth sentences of paragraph (c) of Annex A hereto.

(c) Contest. If any proceeding (including the written claim or written threat of such proceeding) is commenced against any Indemnatee for any such Tax, such

Indemnatee shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, such Indemnatee shall upon receipt of indemnity satisfactory to it and at the expense of the Lessee (including, without limitation, all costs, expenses, losses, legal and accountants' fees and disbursements, penalties and interest) in good faith contest (after consultation with Lessee), in the name of the Lessee or such Indemnatee, the validity, applicability or amount of such Tax by (i) resisting payment thereof if such Indemnatee in its sole discretion shall determine such course of action to be appropriate, (ii) not paying the same except under protest, if protest is necessary and proper, or (iii) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings. The Lessee, through its counsel, shall have the right to participate in and to control any proceeding relating to such contest; provided, however, that if counsel designated by such Indemnatee shall reasonably determine that control by Lessee's counsel might be detrimental to the best interests of such Indemnatee, then such Indemnatee's counsel shall have the sole right to control such proceeding. If any Indemnatee shall obtain a refund of all or any part of such Tax paid by the Lessee, such Indemnatee shall pay the Lessee the amount of such refund, plus any additional tax benefits realized by such Indemnatee as a result of such payment; provided, however, that such amount shall not be payable before such time as the Lessee shall have made all payments or indemnities then due under this § 6. If in addition to such refund such Indemnatee shall receive an amount representing interest on the amount of such refund, the Lessee shall be paid that proportion of such interest which is fairly attributable to Taxes paid by the Lessee prior to the receipt of such refund. The Lessee shall not be deemed to be in default under any of the above indemnification provisions so long as any Indemnatee shall diligently prosecute such contest.

(d) Reports. In case any report or return is required to be made with respect to any obligation of the Lessee under this § 6 or arising out of this § 6, the Lessee will either make such report or return in such manner as will show the ownership of the Units in the Lessor, and send a copy of such report or return to the Lessor, or will notify the Lessor of such requirement and make such report or return in such manner as shall be satisfactory to the Lessor.

(e) Indemnification Under CSA. In the event that the Lessor shall become obligated to make any payment to the Vendor or otherwise pursuant to Article 6 of the CSA (except to the extent the Lessor shall also be obligated to make such payment pursuant to the proviso to the last paragraph of Article 12 thereof) not covered by the first paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed Taxes hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

§ 7. Maintenance; Casualty Occurrences; Insurance; Termination. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) in as good operating order, repair and condition as when originally delivered, ordinary wear and tear excepted, and eligible for railroad interchange in accordance with the interchange rules of the Association of American Railroads and the rules of any governmental agency or other organization with jurisdiction, if applicable.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days during the term of this Lease, or before such Unit shall have been returned in the manner provided in § 11 or § 13 hereof (each such occurrence being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding the delivery of such notice (or, in the event such rental payment date will occur within 15 days after delivery of such notice, on the next succeeding rental payment date) (such date being hereinafter called a "Casualty Payment Date"), the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such Casualty Payment Date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of such Casualty Payment Date in accordance with the schedule referred to below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this

Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit.

The Casualty Value of each Unit as of the Casualty Payment Date for such Unit shall be the percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite such date; provided, however, that if such Casualty Occurrence shall have occurred by reason of a taking or requisition by condemnation or otherwise by any Canadian governmental or public body or authority, the Casualty Value of such Unit shall be the higher of such percentage or the Fair Market Purchase Price (determined in accordance with § 14 hereof) of such Unit.

Whenever any Unit shall suffer a Casualty Occurrence after the expiration of the original or extended term of this Lease and before such Unit shall have been returned in the manner provided in § 13 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be 20% of the Purchase Price of such Unit; provided, however, that if such Casualty Occurrence shall have occurred by reason of a taking or requisition by condemnation or otherwise by any Canadian governmental or public body or authority, the Casualty Value of such Unit shall be the higher of such percentage or the Fair Market Purchase Price (determined in accordance with § 14 hereof) of such Unit; provided further, however, that if such Casualty Occurrence occurs after the term of this Lease has been extended pursuant to § 14 hereof and the Lessee and the Lessor shall have agreed to a different Casualty Value, such different Casualty Value shall be applicable. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessor shall be entitled to recover possession of such Unit, provided that the Lessor shall have the right to transfer to the Lessee without recourse or warranty all of the Lessor's right, title and interest, if any, in and to any such Unit.

The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof (including the issuance of bills of sale for and on behalf of the Lessor), before or after the expiration of this Lease, at the best price obtainable on

an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor and is not in default hereunder, the Lessee shall be entitled to the net proceeds of such disposition to the extent they do not exceed the Casualty Value of such Unit and shall pay any excess to the Lessor; provided further, however, that if any such Unit suffering a Casualty Occurrence is disposed of by the Lessee pursuant to a customary railroad settlement rather than sold as provided in the preceding sentence, then any proceeds received on such settlement which exceed the Casualty Value of such Unit will, provided that the Lessee has previously paid such Casualty Value to the Lessor and is not in default hereunder, be for the benefit of the Lessee unless the scrap value of any such Unit disposed of pursuant to a customary railroad settlement is in excess of its Casualty Value, in which case the Lessee will pay such excess to the Lessor.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of the Units to the Lessor in accordance with the terms of this Lease and during any storage period, at its own expense, cause to be carried and maintained public liability and property damage insurance in respect of the Units against the risks and in the amounts, if any, customarily insured against by the Lessee in respect of similar equipment owned or leased by it.

If the Lessor shall receive any insurance proceeds from insurance maintained by the Lessee or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, pay such proceeds or condemnation payments to the Lessee. All insurance proceeds received by the Lessor pursuant to insurance maintained by the Lessee in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were

paid has been fully repaired so as to comply with the provisions of the first paragraph of this § 7, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

In the event that the Lessee shall during the original term hereof, in its reasonable judgment, determine that the Units remaining under this Lease have become economically obsolete or surplus to the Lessee's requirements in the Lessee's business, as determined in good faith by the Board of Directors of the Lessee, the Lessee shall have the right, at its option and on at least 180 days' prior written notice to the Lessor and the Vendor, to terminate (which act shall hereinafter be called the "Termination") this Lease as to all but not less than all of such Units as of any succeeding rental payment date specified in such notice (such termination date so specified being hereinafter called the "Termination Date"); provided, however, that (i) the Termination Date shall be not earlier than January 2, 1991, (ii) no Event of Default or other event which after the lapse of time or the giving of notice or both would become an Event of Default shall have occurred and be continuing on such date or on the date on which the notice of such Termination shall be given and (iii) on the Termination Date all Units shall be in the condition required for redelivery pursuant to § 13 hereof.

During the period after the giving of such notice until the fifth business day preceding the Termination Date, the Lessee shall use its best efforts to obtain bids (and the Lessor may at its option obtain additional bids) for the purchase of each such Unit, and the Lessee shall at least five business days prior to such Termination Date certify to the Lessor the amount of each such bid and the name and address of the party (which shall not be a corporation, other entity or individual affiliated with the Lessee or any party from whom the Lessee or any such affiliate intends thereafter to lease such Unit) submitting such bid. On the Termination Date, the Lessor shall sell each such Unit for cash to the bidder who shall have submitted the highest bid prior to the Termination Date. The total sale price realized at each such sale shall be retained by the Lessor.

On such Termination Date, the Lessee shall pay to the Lessor with respect to the Units an amount equal to

(i) the excess, if any, of the Termination Value (as hereinafter defined) for the Units computed as of such date over the sale price of the Units so sold after the deduction of all expenses incurred by the Lessor in connection with such sale and (ii) the rental payment with respect to the Units due on such Termination Date. The Termination Value of each such Unit as of the Termination Date shall be the higher of (x) the percentage of the Purchase Price of such Unit set forth in Schedule B hereto opposite such date or (y) the Fair Market Purchase Price (determined in accordance with § 14 hereof) of such Unit as of such date. In no event shall the aggregate amount of sale proceeds retained by the Lessor and payments of rental and Termination Value received by the Lessor as aforesaid be less than the Termination Value (as defined in the CSA) with respect to the Units as of such Termination Date.

If no sale of all the Units shall occur on the Termination Date with respect thereto as provided above, no Termination shall occur with respect to any of the Units and this Lease shall continue in full force and effect without change.

Upon the receipt by the Lessor of the amounts above described, the obligation of the Lessee to pay rent pursuant to § 3 hereof in respect of such Unit on each rental payment date shall continue to and including the Termination Date but shall then terminate. The Lessor shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale other than to transfer or to cause to be transferred all the Lessor's right, title and interest in and to such Unit to the purchaser named in the highest bid certified by the Lessee to the Lessor as above provided. Any such sale shall be free and clear of all the Lessee's rights to such Unit, but otherwise shall be made without warranties other than against the Lessor's acts.

If the Lessee shall exercise its option to effect a Termination, the Lessor may, notwithstanding such election by the Lessee, by written notice to the Lessee given within 90 days after the termination notice is given to the Lessor and upon satisfaction and discharge of the Lessor's obligations under the CSA with respect to the Units, elect to retain such Units, in which case the Lessee shall not be obligated to pay the Termination Value to the Lessor. In the event the Lessor shall so elect to retain such Units and delivers to the Lessee evidence of the satisfaction and discharge of the Lessor's obligations under the CSA with respect to the Units, the Lessee shall deliver such Units to the Lessor in accordance with the provisions of § 13 hereof.

§ 8. Reports. On or before May 31 in each year, commencing with the calendar year 1981, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request, (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by § 5 hereof have been preserved or replaced, (c) stating that the Lessee is in compliance with the requirements under § 7 hereof as to maintenance of insurance and describing in reasonable detail any insurance then being maintained in respect of the Units and in respect of any similar equipment owned or leased by the Lessee and (d) stating that, based on advice of counsel, all filings, registrations, recordings and deposits and all refilings, reregistrations, rerecordings and redeposits necessary for the proper protection of the Vendor's and the Lessor's respective rights in the Units, and for the purpose of carrying out the intention of this Lease, the CSA and the Assignment have been duly accomplished (and upon the written request of the Vendor or the Lessor the Lessee will furnish to the Vendor and the Lessor an opinion of counsel (who may be an employee of the Lessee) satisfactory to the Vendor and the Lessor to such effect). The Lessor shall have the right (but not the obligation) by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

On or before December 15 in each year commencing with the calendar year 1981, the Lessee will furnish to the Lessor and the Vendor an accurate statement to the effect that all payments required to be made hereunder during the year ending on the next succeeding January 1 have been duly authorized by Her Majesty in right of Canada, either by an appropriation of the Parliament of Canada or by other appropriate action, and such statement shall include a brief description of such appropriation or action, as the case may be.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT THEREOF DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS OR ANY COMPONENT THEREOF FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY COMPONENT THEREOF (EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE), it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder, including, but not limited to, any claims and rights arising under the provisions of the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The foregoing provisions of this § 9 shall not be deemed to affect the Lessee's rights of quiet enjoyment, possession, use and assignment provided under §§ 4 and 12 hereof. Any amount received by the Lessee or the Lessor as payment under any such rights or claims against the Builder shall be applied to restore the Units to the condition required by § 7 hereof, except to the extent any such Units shall have suffered a Casualty Occurrence, in which case such amount shall be applied to the payment of the Casualty Value thereof pursuant to § 7 hereof; provided, however, that if an Event of Default

shall have occurred and be continuing such amount shall be paid to the Lessor. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstance in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transport of Canada, the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation, use, value or utility of the Units (all such laws and rules to such extent being hereinafter called the "Applicable Laws"), and in the event that the Applicable Laws require any alteration, replacement, modification or addition of or to any part of any Unit, the Lessee will fully conform therewith at its own expense; provided, however, that the Lessee may, in good faith, contest, with due diligence by appropriate legal proceedings, the validity or application of any Applicable Law in any reasonable manner which does not, in the opinion of the Lessor, adversely affect the property or rights of the Lessor under this Lease or of the Vendor under the CSA and the failure to comply will not impair the value or utility of the Units.

The Lessee and its affiliates, at their own cost and expense, may from time to time make such alterations,

modifications and additions (including, without limitation, any special devices or assemblies at any time attached or affixed to any Unit, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Department of Transport of Canada, the Interstate Commerce Commission, the United States Department of Transportation or any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over such Unit) (hereinafter collectively called "Additions") to the Units as the Lessee may deem desirable in the proper conduct of its business so long as such Additions shall not be inconsistent with the continuing operation of the Units or in accordance with their original purpose and shall not diminish the value, utility or condition of the Units below the value, utility and condition thereof immediately prior to the making of such Additions, assuming the Units were then in the condition required to be maintained by the terms of this Lease; provided, however, that no such Addition shall be made if it is not readily removable from the Unit to which it relates without material damage thereto and without diminishing or impairing the value or utility which the Unit would have had immediately prior to such time had such Addition not been made.

Title to all Parts (as hereinafter defined) incorporated in or installed as part of any Unit shall without further act vest in the Lessor and the Vendor as their respective interests may appear in such Unit itself in the following cases: (i) such Part is in replacement of or in substitution for, and not in addition to, any Part originally incorporated in or installed as part of a Unit at the time of the acceptance thereof hereunder or any Part in replacement of, or in substitution for any such original Part, (ii) such Part is required to be incorporated in or installed as part of the Unit pursuant to the terms of the second paragraph of this § 9 or (iii) notwithstanding the provisions of the third paragraph of this § 9, such Part cannot be readily removed from the Unit to which it relates without material damage thereto and without diminishing or impairing the value or utility which such Unit would have had at such time had such alteration or addition not occurred. In all other cases, if no Event of Default under § 10 hereof (or other event which after lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, title to Parts incorporated in or installed as part of any Unit as a result of any Addition shall vest in the Lessee. The

term Part for the purposes of this paragraph and § 13 hereof shall mean any appliance, part, instrument, accessory, furnishing or other equipment of any nature which may from time to time be incorporated in or installed as part of any Unit.

The Lessee agrees to indemnify, protect and hold harmless the Lessor (in both its individual and fiduciary capacities) and the Owner ("Indemnified Persons") from and against all losses, damages, injuries, liabilities, claims (including, without limitation, claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith (including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, but excluding any items United States Lease Financing, Inc., has agreed to pay as provided in Paragraph 13 of the Participation Agreement), arising out of or as the result of the occurrence of an Event of Default under this Lease or any event which with notice or lapse of time or both would become an Event of Default under this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit, the compliance or noncompliance by the Lessee with any applicable law, rule or regulation with respect to the use, maintenance or operation of any Unit, or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person (except as otherwise provided in § 13 of this Lease); provided, however, that the Lessee shall not be required to indemnify any Indemnified Person in respect of such Indemnified Person's wilful misconduct or negligence or in respect of a breach by such Indemnified Person of any of its obligations hereunder. The indemnities arising under this paragraph shall continue in full force and effect with respect to all events, facts, conditions or other circumstances occurring or existing prior to the expiration or termination of the term of this Lease and return of the Units as provided in § 11 or § 13 of this Lease, notwithstanding such expiration, termination and return; provided, however, that the foregoing indemnification shall not apply to any failure of payment of the principal of or interest on the Conditional Sale Indebtedness and shall not be deemed to operate as a guarantee of the residual value of any Unit. The amount the Lessee shall be required to pay with respect to any of its obligations under this paragraph shall include a payment to the indemnified party sufficient to restore such

party to the same position, after considering the effect of such payment on its income taxes, that the indemnified party would have been in had the liability or expense indemnified against not been incurred. The Lessee shall be obligated under this § 9, irrespective of whether the Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person may proceed directly against the Lessee under this § 9 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against an Indemnified Person in connection with any claim, indemnified against hereunder, the Lessee may, and upon the request of the Indemnified Person will, at the Lessee's expense, resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including, without limitation, attorneys' fees and expenses) incurred by the Indemnified Person in connection with such action, suit or proceeding. The Lessee and the Lessor each agrees to give the other promptly upon obtaining knowledge (which in the case of the Lessor shall mean actual knowledge of an officer or employee of the Lessor's Corporate Trust Department) thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this § 9 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, it shall be subrogated to any right of the Indemnified Person in respect of the matters against which indemnity has been given. Any payments received by an Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this § 9 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matter.

In the event that the Lessor shall become obligated to make any payment to the Vendor or otherwise pursuant to the first paragraph of Article 13 of the CSA not covered by the preceding paragraph, the Lessee shall pay such additional amounts to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision; provided, however, that the Lessee shall

not be required to make any such payment in respect of any amount the Lessor shall become obligated to pay pursuant to such Article 13 in respect of a default or an event of default under the CSA unless such default or event of default shall be attributable to a default by the Lessee or an Event of Default hereunder.

The Lessee agrees to prepare and deliver, at its expense, to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any United States or Canadian Federal, provincial, state or other regulatory authority by reason of the interest of the Lessor or the Vendor in the Units or the leasing thereof to the Lessee; provided, however, that, in the case of any filing with any United States Federal, state or other regulatory authority, the Lessor shall have made a written request to the Lessee for such filing within a reasonable time prior to the requested date of filing.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein called an "Event of Default") shall occur:

(a) default shall be made in payment of any amount provided in § 3, § 7 or § 14 hereof and such default shall continue for 10 days after such payment is due;

(b) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement, and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

(c) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof; or

(d) any representation or warranty made by the Lessee in the Participation Agreement or in any document or certificate furnished by the Lessee to the

Lessor, the Owner or the Vendor in connection herewith or therewith or pursuant hereto or thereto shall be incorrect in any material respect when made;

then, in any such case, the Lessor, at its option, may,

(A) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(B) by notice in writing to the Lessee, terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum with respect to each Unit which represents the excess of (1) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (2) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 6% per annum

discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, together with any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of the rental; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value (after deduction of all estimated expenses of such sale) of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this subparagraph (B) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale (in addition to the amounts payable pursuant to §§ 6, 9 and 15 hereof), as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination, over the net proceeds of such sale.

In addition, the Lessee shall be liable for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies, except as otherwise provided above, and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

In the event the Lessee shall fail to pay any amount hereunder by reason of the failure to obtain the necessary Parliamentary appropriations, then the Lessor, at its option, may, by notice in writing to the Lessee, terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the

Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom.

If the Lessee fails to perform or comply with any agreement, covenant or condition contained in this Lease, and such nonperformance or noncompliance could, with the lapse of time and/or demand or failure to take action, result in an Event of Default under clause (a) or (b) of this § 10, the Lessor itself may (but shall not be obligated to), upon notice to the Lessee, perform or comply with such agreement, covenant or condition to the extent provided in Article 15(e) of the CSA, and the amount of the reasonable costs and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amounts at the rate of 1% per annum over the Floating Prime Rate (as defined in Article 4 of the CSA), shall be payable to the Lessor by the Lessee upon demand.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies, and a waiver of any such right on one occasion shall not constitute a waiver of such right as to any other occasion and shall not be effective unless in writing signed by the Lessor.

§ 11. Return of Units upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor and shall give prompt telegraphic and written notice to the Association of American Railroads and all railroads having possession of any Unit so to return such Units. Each Unit returned to the Lessor pursuant to this § 11 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear and modifications, if any, permitted by this Lease excepted and (ii) be in compliance with the Applicable Laws. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner cause such Units to be placed upon such storage tracks as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) cause the Units to be transported to (i) any reasonable place in Canada on any lines of a Canadian railway or to the point of interconnection with any connecting carrier for shipment or (ii) any reasonable place in the United States or any lines of Canadian National Railway Company ("CNR") or Canadian Pacific Limited ("CP") or any of their respective affiliates which is not more than 100 miles from the border between the United States and Canada, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. All per diem amounts earned in respect of the Units after the date of termination of this Lease

shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay, as liquidated damages for the failure so to assemble, deliver and store such Unit, to the Lessor for each day thereafter an amount equal to the amount, if any, by which 1/180 of the rental payment on the next preceding rental payment date exceeds the actual earnings received by the Lessee on such Unit for each such day and paid over to the Lessor pursuant to the preceding sentence; such payment shall not affect the obligation of the Lessee to redeliver the Equipment pursuant to the first sentence of this paragraph.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whosoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. The Lessor agrees that it will not assign any of its rights under this Lease without the prior written consent of the Lessee, except as provided in Article VII of the Trust Agreement, and the Lessee shall be under no obligation to any assignee of the Lessor except under written notice of such assignment from the Lessor; provided, however, that upon receiving notice of any such assignment the Lessee shall give the necessary acknowledgment of such notice required to be given under Part IX of the Financial Administration Act (Canada) in order to make such assignment effective.

So long as no Event of Default or event which with notice or lapse of time would become an Event of Default exists hereunder, the Lessee shall be entitled to the quiet enjoyment, possession and use of the Units and, without the Lessor's consent, to sublease the Units to, or to permit their use by, or to enter into an operating agreement with respect to the Units with, a user incorporated in Canada or in the United States of America (or any state thereof or the District of Columbia), upon lines of railroad owned or operated by the Lessee or

such user or over which the Lessee or such user has track-age rights or other operating rights or over which any of their railroad equipment is regularly operated pursuant to contract and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or runthrough service, but only upon and subject to all the terms and conditions of this Lease; provided, however, that (1) the Lessee shall not sublease or use or permit the sublease or use of any Unit outside the United States of America or Canada and (2) that the Lessee shall not sublease any Unit or enter into an operating agreement with respect to any Unit in either case for a term of more than one year without the prior written consent of the Lessor, which consent shall not be unreasonably withheld, except that no such consent shall be necessary in the case of any operating agreement with CNR or CP; provided that upon the request of the Lessor or the Vendor the Lessee will deliver a copy of any such operating agreement with CNR or CP, as the case may be, or the operative portions thereof to the Lessor and the Vendor. No such sublease or agreement for use by others shall relieve the Lessee of its obligations hereunder which shall be and remain those of a principal and not a surety.

Any such sublease or operating agreement shall be subject to the rights and remedies of the Lessor under this Lease in respect of the Units covered by such sublease or agreement upon the occurrence of an Event of Default hereunder and shall obligate the sublessee or user of such Units to maintain such Units in at least as good operating order, condition and repair as required by § 7 hereof.

The Lessee, at its own expense, will as soon as possible cause to be duly discharged (a) any lien, charge, security interest or other encumbrance (except any sublease as aforesaid and other than an encumbrance resulting from claims against the Lessor not related to the ownership or leasing of the Units and except any lien created by the CSA) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interest of the Lessor or the Lessee therein, except that this covenant will not be breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent and (b) any claims, liens, security interests or other encumbrances created by any

person other than the Builder or any of its affiliates, after such Unit has been handed over by the Builder to CNR at the storage area at the Builder's plant pursuant to the Bailment Agreement dated September 18, 1980, between the Builder and CNR; provided, however, that the Lessee shall be under no obligation to discharge any such right, lien, charge, security interest or encumbrance so long as it is contesting the same in good faith and by appropriate legal proceedings and the failure to discharge the same does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or of the Vendor under the CSA.

The Lessor agrees that it will, at its own cost and expense, and in its individual capacity, promptly take such action as may be necessary to duly discharge any liens or encumbrances on any of the Units which result from claims against the Lessor not related to the ownership of the Units or the administration of the Trust Estate (as defined in the Trust Agreement).

§ 13. Return of Units upon Expiration of Term. As soon as practicable on or after the expiration of the original or any extended term of this Lease, the Lessee will (unless the Units are sold to the Lessee or shall have suffered a Casualty Occurrence), at its own cost and expense, at the request of the Lessor, deliver possession of the Units to the Lessor upon such storage tracks as the Lessor may reasonably designate and permit the Lessor to store such Units on such tracks for a period not exceeding 90 days and transport the same, at any time within such 90-day period, to a final destination at any reasonable place in Canada on any lines of a Canadian railway or to the point of interconnection with any connecting carrier for shipment, all as directed by the Lessor upon not less than 30 days' written notice to the Lessee, the movement and storage of the Units to be at the expense and risk of the Lessee during such 90-day period. During any such storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising either on behalf of the Lessor or any prospective purchaser, lessee or user, the rights of inspection granted under this sentence. The assembling, delivery,

storage and transporting of the Units as hereinbefore provided are of the essence of this Lease and, upon application to any court having jurisdiction in the premises, the Lessor shall be entitled to a judgment, order or decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. Each Unit returned to the Lessor pursuant to this § 13 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear and modifications, if any, permitted by this Lease excepted and (ii) be in compliance with the Applicable Laws.

§ 14. Renewal and Purchase Options. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term or any extended term of this Lease, as the case may be,

(i) elect to extend the term of this Lease in respect of all, but not fewer than all, the Units then covered by this Lease, for up to three separate but successive periods commencing on the scheduled expiration of the original term or any extended term of this Lease, as the case may be, provided that each such extension shall be for a five-year period and no such extension shall extend beyond January 2, 2021; or

(ii) at the end of the first five-year renewal term or any succeeding renewal term, as provided above, purchase all, but not fewer than all, the Units then subject to this Lease, at a Fair Market Purchase Price (as hereinafter defined) payable at the end of such extended term.

Any extension pursuant to subparagraph (i) above shall be on the same terms and conditions as are contained in this Lease, except as to the amount of rentals, which shall be at a Fair Market Rental, payable semiannually in arrears, and except as to applicable Casualty Values and Termination Values, if any, which shall be as agreed upon between the Lessor and the Lessee at the time of such extension, or as shall be determined by appraisal as set forth below.

The Fair Market Rental and Fair Market Purchase Price shall be determined on the basis of, and shall be equal in amount to, the cash rental for a five-year renewal

of this Lease or the purchase price (as of such date as the context herein requires), as the case may be, which would obtain in an arm's-length transaction between an informed and willing lessee or purchaser (other than a scrap or used equipment dealer) and an informed and willing lessor or seller, as the case may be, under no compulsion to lease or sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental or purchase price and assuming that the Units have been collected in one place directed by the Lessor, but there shall be excluded any value attributable to additions, modifications and improvements which the Lessee is entitled to remove pursuant to § 9 hereof. If, after 60 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental or Fair Market Purchase Price of the Units, such rental or purchase price shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such rental or purchase price by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 35 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 business days after such notice is given, either party may request the American Arbitration Association to make such appointment, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental or Fair Market Purchase Price, as the case may be (and, in the case of any renewal term, the Fair Market Rental and Fair Market Purchase Price at the beginning and end of such renewal term), of the Units then subject to this Lease or any extended term thereof, within 70 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental or Fair Market Purchase Price, as the case may be, of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination

of the appraiser which differs most from that of the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental or Fair Market Purchase Price, as the case may be. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental or Fair Market Purchase Price, as the case may be, and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

Upon payment of the purchase price of any Unit, pursuant to an election by the Lessee to purchase the Units, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Builder, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

§ 15. Tax Indemnification. The agreement of the Lessee and the Owner as to indemnification of the Owner in respect of certain assumed tax consequences of the transactions contemplated hereby are set forth in Annex A hereto, which is hereby incorporated in this § 15 to the same extent as if set forth in full in this § 15.

§ 16. Recording. The Lessee will cause this Lease, the CSA and any assignment hereof or thereof to be filed in accordance with 49 U.S.C. § 11303 and as contemplated by Paragraph 7(b) of the Participation Agreement. The Lessee will undertake the filing, registering, deposit and recording required of the Lessor under the CSA and will from time to time, at the expense of the Lessee, do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law (including

renewals of the filings contemplated by Paragraph 7(b) of the Participation Agreement) or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective rights in the Units, or for the purpose of carrying out the intention of this Lease, the CSA and the Assignment (as defined in the Participation Agreement). The Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing, recording and other acts which may be required under this § 16. The filings referred to in the first sentence of this § 16 shall be made prior to the delivery and acceptance hereunder of any Unit.

§ 17. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to interest at a rate equal to 1% per annum over the Floating Prime Rate on the overdue rentals and other obligations for the period of time during which they are overdue.

§ 18. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when delivered to such other party or deposited in the mails, first-class postage prepaid, addressed as follows:

if to the Lessor, at 79 South Main Street, Salt Lake City, Utah 84111, Attention of Trust Division, Corporate Trust Department; and

if to the Lessee, at 423 Main Street, Winnipeg, Manitoba R3C 2P5, Attention of Treasurer/Comptroller;

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing. Any certificate, document or report required to be furnished by any party hereto to the other parties shall be delivered to the address set forth above for such party. Any notice, certificate, document or report required to be furnished by any party to the Vendor shall be delivered to the Vendor at its applicable address for notices under the Participation Agreement.

§ 19. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited

or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Except for the Participation Agreement and the exhibits thereto, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

§ 20. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Utah; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing, recording or deposit hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed, recorded or deposited, or in which any Unit of the Equipment shall be located, and any rights arising out of the markings of the Units of Equipment. Notwithstanding anything herein to the contrary, any action, suit or proceeding to enforce the obligations of the Lessee or Her Majesty in right of Canada hereunder shall be brought only in an appropriate forum in Canada.

§ 21. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor shall be deemed to be the original counterpart. Although for convenience this Lease is dated as of the date first set forth above, the actual dates of execution hereof by the parties hereto are dates stated in the acknowledgments hereto annexed.

§ 22. Immunities; No Recourse. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, warranties, covenants, undertakings and agreements herein, made on the part of the Lessor, are made and intended not as personal representa-

tions, warranties, covenants, undertakings and agreements by First Security Bank of Utah, N.A., or for the purpose or with the intention of binding said bank personally, but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by said bank not in its own right but solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and except in the case of gross negligence or wilful misconduct on the part of such bank, no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank or the Owner on account of this Lease or on account of any representation, warranty, covenant, undertaking or agreement of the Lessor or the Owner herein, other than pursuant to the last sentence of the fifth paragraph of § 9 hereof or the last paragraph of § 12 hereof and, in the case of the Owner, § 15 hereof, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee, the Vendor and by all persons claiming by, through or under either of them.

§ 23. Judgment. (a) If for the purposes of obtaining judgment in any court it is necessary to convert a sum due hereunder in U.S. dollars into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Lessor could purchase U.S. dollars with such other currency on the business day preceding that on which final judgment is given.

(b) The obligation of the Lessee in respect of any sum due from it to the Lessor hereunder shall, notwithstanding any judgment in a currency other than U.S. dollars, be discharged only to the extent that on the business day following receipt by the Lessor of any sum adjudged to be so due in such other currency the Lessor may in accordance with normal banking procedures purchase U.S. dollars with such other currency; if the U.S. dollars so purchased are less than the sum originally due to the Lessor in U.S. dollars, the Lessee agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Lessor against such loss, and if the U.S. dollars so purchased exceed the sum originally due to the Lessor in U.S. dollars, the Lessor agrees to remit to the Lessee such excess.

§ 24. Payment of Certain Expenses. In the event the transactions contemplated by the Participation

Agreement are not consummated, or if no Equipment is delivered under the CSA and this Lease, on or prior to December 31, 1980, all fees and expenses otherwise payable by United States Lease Financing, Inc., or by the Owner pursuant to, or as described in, Paragraph 13 of the Participation Agreement will be paid by the Lessee; provided, however, that the Lessee shall not be obligated to pay such fees and expenses if the transactions contemplated by the Participation Agreement shall not be consummated on or prior to December 31, 1980, solely by reason of a default by the Owner or the Lessor under the Participation Agreement or related documents. In addition, the Lessee will pay the reasonable fees and disbursements of the Vendor, the Lessor and the Owner incurred subsequent to the termination of this Lease by the Vendor or the Lessor after the occurrence of an Event of Default hereunder or attributable to periods during the continuance of a Declaration of Default made under the CSA while an Event of Default hereunder shall have occurred and be continuing. The obligations of the Lessee under this § 24 will survive termination of this Lease.

§ 25. Applicable Statutory Provisions. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that the obligations of the Lessee and Her Majesty in right of Canada hereunder shall be subject to the provisions of the Financial Administration Act (Canada), as in effect on the date of execution hereof.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date first above written.

THE CANADIAN WHEAT BOARD,
a body corporate acting as
agent of Her Majesty in right
of Canada,

by

by

[Seal]

Attest:

FIRST SECURITY BANK OF UTAH, N.A.,
as Trustee as aforesaid,

by

Authorized Officer

[Corporate Seal]

Attest:

Authorized Officer

PROVINCE OF MANITOBA,)
) ss.:
CITY OF WINNIPEG,)

On this day of 1980, before me personally appeared and to me personally known, who, being by me duly sworn, says that they are and respectively, of THE CANADIAN WHEAT BOARD, that one of the seals affixed to the foregoing instrument is the seal of said Board, that said instrument was signed and sealed on behalf of said Board by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Board.

Notary Public

My Commission Expires

STATE OF UTAH,)
) ss.:
COUNTY OF SALT LAKE,)

On this day of 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, N.A., that one of the seals affixed to the foregoing instrument is the seal of said national association, that said instrument was signed and sealed on behalf of said national association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national association.

Notary Public

[Notarial Seal]

My Commission Expires

SCHEDULE A TO LEASE
[McCormick Equipment]

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>
Covered hopper cars	275	CPWX 605827 through CPWX 606101

SCHEDULE B TO LEASE

Casualty Values

<u>Casualty Payment Date</u>	<u>Percentage of Purchase Price</u>	<u>Casualty Payment Date</u>	<u>Percentage of Purchase Price</u>
1/2/81	101.87%	1/2/94	117.46%
7/2/81	107.26	7/2/94	116.70
1/2/82	109.33	1/2/95	109.93
7/2/82	114.24	7/2/95	108.88
1/2/83	115.88	1/2/96	101.88
7/2/83	120.37	7/2/96	100.66
1/2/84	121.58	1/2/97	93.55
7/2/84	125.64	7/2/97	92.25
1/2/85	126.40	1/2/98	85.09
7/2/85	130.01	7/2/98	83.74
1/2/86	130.32	1/2/99	76.55
7/2/86	133.45	7/2/99	75.22
1/2/87	133.28	1/2/00	68.20
7/2/87	135.93	7/2/00	67.19
1/2/88	135.27	1/2/01	60.58
7/2/88	137.42	7/2/01	60.05
1/2/89	136.14	1/2/02	53.49
7/2/89	137.76	7/2/02	52.56
1/2/90	134.72	1/2/03	45.61
7/2/90	135.21	7/2/03	44.25
1/2/91	131.82	1/2/04	36.85
7/2/91	132.02	7/2/04	35.02
1/2/92	128.34	1/2/05	27.13
7/2/92	128.22	7/2/05	24.79
1/2/93	123.23	1/2/06	20.00
7/2/93	122.79		

SCHEDULE C TO LEASE

Termination Values

<u>Termination Date</u>	<u>Percentage of Purchase Price</u>	<u>Termination Date</u>	<u>Percentage of Purchase Price</u>
1/2/91	144.01%	1/2/99	83.34%
7/2/91	144.90	7/2/99	82.07
1/2/92	140.30	1/2/00	73.50
7/2/92	140.79	7/2/00	72.71
1/2/93	135.79	1/2/01	64.76
7/2/93	135.87	7/2/01	64.69
1/2/94	130.45	1/2/02	56.91
7/2/94	130.11	7/2/02	56.43
1/2/95	122.01	1/2/03	48.25
7/2/95	121.26	7/2/03	47.35
1/2/96	112.82	1/2/04	38.73
7/2/96	111.81	7/2/04	37.38
1/2/97	103.21	1/2/05	28.29
7/2/97	102.08	7/2/05	26.44
1/2/98	93.38	1/2/06	20.00
7/2/98	92.15		

SCHEDULE D TO LEASE

Certificate of Acceptance

To: First Security Bank of Utah, N.A.,
as Trustee (the "Lessor")
79 South Main Street,
Salt Lake City, Utah 84111
Attention of Trust Division,
Corporate Trust Department

I, the duly authorized representative of First Security Bank of Utah, N.A. (the "Lessor"), and The Canadian Wheat Board (the "Lessee"), for the purposes of the Conditional Sale Agreement dated as of September 15, 1980, between National Steel Car Limited and the Lessor and the Lease of Railroad Equipment dated as of September 15, 1980, between the Lessee and the Lessor, DO HEREBY CERTIFY that there has been inspected on behalf of the Lessee and the Lessor and found to be completed and marked in accordance with the said Conditional Sale Agreement and Lease and the applicable specifications, requirements and standards referred to in said Conditional Sale Agreement, and that there has been delivered to the Lessor at

, and
fully and finally accepted by me on behalf of the Lessee and the Lessor (both under the said Conditional Sale Agreement and the said Lease), the following units of railroad equipment constructed by National Steel Car Limited pursuant to said Conditional Sale Agreement:

<u>Description</u>	<u>Quantity</u>	<u>No.</u>
--------------------	-----------------	------------

I DO HEREBY FURTHER CERTIFY that, in accordance with Article 9 of the said Conditional Sale Agreement and § 5 of the said Lease, there is plainly, distinctly, permanently and conspicuously marked on each side of each of said units the following legend in letters not less than one inch in height:

"Owned by a Bank or Trust Company.
Ownership Subject to a Conditional Sale
Agreement Filed with the Interstate
Commerce Commission."

Dated: , 1980

Authorized Representative of
Lessor and Lessee

Builder: National Steel Car Limited

ANNEX A TO LEASE

Tax Indemnification

(a) Tax Assumptions. The lease to which this Annex is attached (the "Lease") has been entered into, and the Owner's net economic return has been estimated, on the basis of the following assumptions for Federal income and state and local income or franchise tax purposes (hereinafter referred to as the "Tax Assumptions"):

(1) the Lease will be treated as a true lease, and the Owner will be treated as the beneficial owner of the Units;

(2) each Unit will be placed in service on its delivery date;

(3) the Owner will be entitled to take into account with respect to each Unit such credits, deductions and other benefits as are provided by the Internal Revenue Code of 1954, as amended (the "Code"), and the state and local taxing statutes in the jurisdictions in which the Owner resides, including, without limitation:

(A) deductions for depreciation of 100% of the Purchase Price of each Unit (the "Depreciation Deductions"), computed on the following basis:

(i) election of the class life asset depreciation range system of depreciation under section 167(m) of the Code and Treasury Regulation §1.167(a)-11 and selection of an asset depreciation period of fifteen years;

(ii) use of the straight line method of depreciation provided in section 167(b)(1) of the Code; and

(iii) a net salvage value not exceeding 10% of the Purchase Price of such Unit, to be reduced to zero by the election permitted by section 167(f) of the Code; and

(B) deductions with respect to interest payable on the Conditional Sale Indebtedness (the "Interest Deductions");

(4) all rental payments made pursuant to Section 3 of the Lease will be subject to Canadian withholding tax at the rate of 15%;

(5) the marginal rate of Federal income tax imposed on the Owner is 70%;

(6) the marginal rate of state and local income or franchise tax imposed on the Owner is 11%;

(7) the Owner will claim the Depreciation Deductions and the Interest Deductions on its Federal income tax returns and on the appropriate state and local income or franchise tax returns; and

(8) the Owner (A) will deduct the Canadian withholding tax in computing its Federal tax liability for all taxable years ending on or before December 31, 1994, (B) will not deduct the Canadian withholding tax for state and local income or franchise tax purposes, and (C) will claim the Canadian withholding tax as a credit in computing its Federal income tax liability for its taxable years beginning on or after January 1, 1995.

(b) Consistent Tax Returns. The Lessee agrees that neither it nor any affiliate will at any time take any action, directly or indirectly, or file any returns or other documents inconsistent with any of the Tax Assumptions or any of the statements set forth in clauses (i), (ii) or (iii) of subparagraph (c)(3)(B) of this Annex, and that the Lessee and any such affiliate will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent expressed in paragraph (a) and the statements set forth in clauses (i), (ii) and (iii) of subparagraph (c)(3)(B) of this Annex. Upon request of the Owner, the Lessee will provide the Owner with copies of such documents as may be reasonably requested by the Owner to demonstrate that the Lessee has complied with its obligation under this paragraph

(c) Indemnification. If by reason of:

(1) any act of commission, omission or misrepresentation on the part of the Lessee;

(2) breach of any agreement, covenant, or warranty on the part of the Lessee contained herein or in the Lease or the Participation Agreement or any exhibit thereto;

(3) the inaccuracy in law or in fact, at the date of the delivery by the Builder to the Lessor of any Unit, (A) of any representation on the part of the Lessee contained herein or in the Lease or the Participation Agreement or in any exhibit thereto, or (B) in any of the following statements:

(i) such Unit, on the date of its delivery by the Builder to the Lessor, will constitute new property, and the original use of such Unit, within the meaning of Section 167 of the Code, will commence with the Lessor on such delivery date; or

(ii) the Purchase Price of such Unit will be equal to its fair market value on its delivery date; or

(iii) on the date each Unit is placed in service its estimated useful life and estimated residual value at the end of the original term of the Lease will meet the requirements of Section 4(1)(c) of Rev. Proc. 75-21, 1975-1 Cum. Bull. 715;

the Owner shall not be allowed for any taxable year (or portion thereof) all or any portion of the Interest Deductions or the Depreciation Deductions, or all or any part of the Depreciation Deductions is recaptured pursuant to Section 1245 of the Code or any similar provision, (any such non-allowance or recapture being referred to hereinafter as a "Loss"), then, unless excused by the provisions of paragraph (d) hereof, the Lessee will pay to the Owner an amount which, after reduction by all taxes required to be paid by the Owner in respect of the receipt of such amount, shall be equal to the sum of the aggregate additional Federal, state or local income taxes, or franchise taxes based on income, payable by the Owner with respect to such taxable year as the result of any such Loss plus, again on an after-tax basis, an amount equal to any interest, additions to tax or penalties associated with such income or franchise taxes payable by the Owner. If, as a result of a Loss, the aggregate Federal, state or local income or franchise taxes paid by the Owner for any taxable year, including any taxable year after the expiration of this Lease, shall be less than the amount of such taxes which would have been payable by the Owner had no such Loss occurred (including a reduction in taxes arising from the utilization of any Canadian withholding taxes paid by the Lessee with respect to payments made pursuant to this paragraph (c) as a credit in determining the Owner's federal income tax), then the Owner, will promptly

pay to or for the benefit of the Lessee the amount of such difference in taxes plus any additional tax benefits realized by the Owner as a result of such payment provided, however, that the Owner shall not be obligated to make any payment pursuant to this sentence to the extent that the sum of such payment and all other payments by the Owner for that Loss pursuant to this paragraph (c) would exceed the amount of all payments actually made by the Lessee to the Owner for that Loss pursuant to this paragraph (c). Any amount which the Owner would have been required to pay the Lessee under this paragraph (c) shall reduce pro tanto the amount, if any, which the Lessee is subsequently obligated to pay the Owner under this paragraph (c). All amounts payable to the Owner hereunder shall be paid promptly, and in any event within 30 days after receipt by the Lessee of a written demand therefor, accompanied by a written statement describing in reasonable detail the related Loss and the computation of the amount so payable; provided, however, that the Lessee shall not be required to pay any such amount prior to the time provided in paragraph (f) if the Loss in question is being contested pursuant to such paragraph, or, if there is no such contest, prior to the payment of additional tax which becomes due as a result of such Loss. Any payment due to the Lessee from the Owner pursuant to this paragraph (c) shall be paid promptly and in any event within 30 days after the end of the taxable year in which the Owner realizes any such savings in its income or franchise taxes or additional tax benefits, as the case may be.

(d) Limitation on Indemnification. Notwithstanding anything to the contrary set forth in paragraph (c), the Lessee shall have no liability to the Owner for indemnification hereunder for any Loss:

(1) to the extent that such Loss is a direct result of the occurrence of any event which causes the Lessee to pay in full the Casualty Value or Termination Value of any Unit;

(2) to the extent of any additions to tax or penalties which are a direct result of any act or omission of the Owner or its agents or employees not contemplated by the Participation Agreement; or

(3) to the extent that such Loss is a direct result of the purchase of the Owner's beneficial interest in the Units pursuant to paragraph (k).

(e) Indemnity for Capital Expenditures. If at any time the Owner is required by (i) a provision of any tax law or the regulations promulgated thereunder; (ii) any published revenue ruling, revenue procedure, or other pub-

lished statement of position by any taxing authority which has not been held invalid by any court having appellate jurisdiction over the tax liability of the Owner in a decision which has become final; or (iii) a determination upon any audit of the Owner's tax return, to include in its gross income for Federal, state or local income or franchise tax purposes an amount in respect of any addition to any Unit ("Capital Expenditures"), then the Lessee will pay to the Owner 733/267 of such amount or, from time to time, such amounts which are includable in the Owner's gross income for Federal, state or local income or franchise tax purposes as a result of such Capital Expenditure, plus, on an after-tax basis, an amount equal to any interest, additions to tax or penalties associated with such income or franchise taxes payable by the Owner. The Owner shall be deemed to realize income and franchise tax savings from depreciation deductions taken with respect to Capital Expenditures described in the first sentence of this paragraph (e), which it has included in its gross income for Federal, state or local income or franchise tax purposes. The Owner shall credit to the Suspense Account described in subparagraph (i) an amount equal to 733/267 of such depreciation deductions taken before January 1, 2006. The amount of the Owner's adjusted basis in leasehold improvements resulting from Capital Expenditures existing on January 2, 2006, if any, shall be applied in accordance with the principles set forth in clause (2) of paragraph (i). All amounts payable to the Owner hereunder shall be paid promptly, in any event within 30 days, after receipt by the Lessee of a written statement describing in reasonable detail the inclusion in gross income; provided, however, that the Lessee shall not be required to pay any such amount prior to the time provided in paragraph (f) if the inclusion in question is being contested pursuant to paragraph (f), or, if there is no such contest, prior to the payment of additional tax which becomes due as a result of such inclusion. Any credit to the Suspense Account required of the Owner pursuant to this paragraph (e) shall be credited promptly and in any event within 30 days after the end of the taxable year in which the Owner is deemed to realize any such savings in its income or franchise taxes or additional tax benefits, as the case may be. The Owner shall attempt to maximize the tax benefits to which it may become entitled as a result of the inclusion of the cost of Capital Expenditures in gross income, by making such elections (including, where advantageous, the applicable asset guideline repair allowance and accelerated depreciation, if then permitted) and utilizing such conventions and accounting methods as will further such objectives; provided, however, that the Owner shall not be required to make any election or utilize a particular convention or accounting method if the Owner shall determine, in its sole discretion, that in so doing it will adversely affect its tax liability determined without regard to this transaction.

(f) Contest of Disallowance of Tax Benefits. In the event a claim shall be made at any time by the Internal Revenue Service which, if successful, would require the Lessee to indemnify the Owner under this Annex, the Owner hereby agrees to take such action in connection with contesting such claim as the Lessee shall reasonably request in writing from time to time; provided, however, that: (i) within 30 days after notice by the Owner to the Lessee of such claim, the Lessee shall request that such claim be contested; (ii) the Owner, at its sole option, may forego any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service in respect of such claim and may, at its sole option, either pay the tax claimed and sue for a refund in the appropriate United States District Court or the United States Court of Claims, as the Owner shall elect, or contest such claim in the United States Tax Court; (iii) prior to taking such action, the Lessee shall have furnished the Owner with an opinion of independent tax counsel reasonably satisfactory to the Owner to the effect that a meritorious defense exists to such claim; (iv) the Lessee shall have indemnified the Owner in a manner satisfactory to the Owner for any liability or loss arising out of the transactions contemplated by the Participation Agreement which the Owner may incur as the result of contesting such claim and shall have agreed to pay the Owner on demand an amount which, after payment of all taxes incurred in respect of the receipt thereof, less any taxes saved by the deduction thereof, shall be equal to all costs and expenses which the Owner may incur in connection with contesting such claim, including, without limitation, reasonable attorneys' and accountants' fees and disbursements, and the amount of any interest or penalty which may ultimately be payable as a result of contesting such claim; and (v) if the Owner shall have elected hereunder to pay the tax claimed and then seek a refund, the Lessee will lend the Owner, on an interest-free basis, funds sufficient to pay the tax and will agree to indemnify the Owner, on an after-tax basis, for any increase in the Owner's tax liability which may result from the receipt of such loan. If any such claim referred to above shall be made by the Internal Revenue Service and the Lessee shall have reasonably requested the Owner to contest such claim as above provided and shall have duly complied with all the terms of this paragraph (f), the Lessee's liability for indemnification shall become fixed upon final determination of the liability of the Owner. At such time the Lessee shall become obligated for the payment of any indemnification hereunder resulting from the outcome of such contest, and, if the Owner has elected to pay the tax claimed and seek a refund, the Owner shall become obligated to repay the interest-free loan to the extent of any

refund received or taxes which would have been refunded but for any issue unrelated to the transactions contemplated by the Participation Agreement, plus any tax benefits realized by the Owner as a result of such payment by the Owner to the Lessee. The obligations of the Owner and the Lessee will first be set off against each other and any difference owing by either party shall be paid within 30 days after such final determination. If in connection with such final determination the Owner receives a refund of tax (or would have received a refund but for an issue unrelated to the transactions contemplated by the Participation Agreement), any interest received by the Owner (or interest which the Owner would have received but for an issue unrelated to transactions contemplated by the Participation Agreement) which is fairly attributable to such contested taxes will be paid over to the Lessee. In the event that the Owner receives a refund of any tax paid by it for which it has received a payment from the Lessee pursuant to this Annex (other than a tax which is the subject of a contest pursuant to this paragraph (f)) the Owner shall pay the Lessee the sum of (i) such refund and any interest thereon paid by the appropriate taxing authority and (ii) any tax benefits realized by the Owner as the result of such payment by the Owner to the Lessee, provided that such payment by the Owner shall not exceed the amount paid by the Lessee which is fairly attributable to the refunded tax plus any interest on the refunded tax paid by the appropriate taxing authority. The payment described in clause (i) of the preceding sentence shall be made within 30 days after receipt of such refund; the payment described in clause (ii) of the preceding sentence shall be made within 30 days after the end of the taxable year in which the Owner realizes such tax benefits.

In the case of any such claim by the Internal Revenue Service referred to above, the Owner agrees promptly to notify the Lessee in writing of such claim and agrees not to make payment of the tax claimed nor to consent to the assessment of any deficiency relating to such claim for at least 30 days after the giving of such notice and agrees to give to the Lessee any relevant information relating to such claim which may be particularly within the knowledge of the Owner and otherwise to cooperate with the Lessee in good faith in order to contest any such claim effectively.

Notwithstanding the preceding provisions of this paragraph (f), the Owner reserves the right at all times to direct its tax counsel not to take or to cease taking all legal or other appropriate action deemed reasonable by such counsel in order to sustain all or any part of any Loss or Capital Expenditure whereby such action by the Owner will relieve the Lessee of its obligation to the Owner under this

Annex in respect to the part of the Loss or Capital Expenditure not so contested.

(g) Adjustment of Casualty and Termination Values

If the Lessee shall be required to indemnify the Owner pursuant to this Annex with respect to any Loss or Capital Expenditure and the amount of such indemnity shall be actually so paid, the Owner shall recompute the Casualty and Termination Values in accordance with the manner in which such values were originally computed by the Owner to reflect the foregoing provided that Casualty and Termination Values, together with the rental payment then due, shall be sufficient to satisfy the principal amount of the Conditional Sale Indebtedness attributable to the Unit or Units with respect to which such Casualty and Termination Value payments are made, together with the interest thereon which is accrued and unpaid on such date. Thereupon the Owner shall certify to the Lessee either that the values as set forth in the Lease do not require change or the new values necessary to reflect the foregoing, describing in reasonable detail the basis for computing such new values, as the case may be, and upon such certification such new values shall be substituted for the values appearing in the Lease.

(h) Indemnification for Canadian Withholding Taxes

The Owner's net economic return has been estimated on the basis that Canadian withholding tax at the rate of 15% will be imposed on all rental payments made pursuant to Section 3 of the Lease ("Covered Payments"). If Covered Payments are not subject to Canadian withholding tax at the rate of 15% (other than as a result of the Owner or the Lessor being considered to be engaged in a trade or business in Canada or a resident of Canada) the following payments shall be made:

(1) If the Canadian withholding tax rate applicable to any Covered Payment payable before January 1, 1995 is less than 15% (or no Canadian withholding tax is applicable to such payment), the Owner will be deemed to have realized an after-tax benefit equal to 3.3% of the excess of (i) the Canadian withholding tax which would have been imposed with respect to such payment if such payment had been subject to Canadian withholding tax at the rate of 15%, over (ii) the amount of Canadian withholding tax actually imposed on such payment. The Owner shall credit to the Suspense Account described in paragraph (i), not later than 30 days after the close of the relevant year, an amount determined by solving for the value of BT in the following formula:

$$BT = \frac{ATCF (1-W)}{.267-.3(W)}$$

where:

ATCF = the Owner's after-tax benefit, as determined pursuant to the first sentence of this subparagraph (1); and

W = the rate of Canadian withholding tax imposed on such rental payments.

(2) If the Canadian withholding tax rate applicable to any Covered Payment payable before January 1, 1995 is more than 15%, the Owner will be deemed to have suffered an after-tax detriment equal to 3.3% of the excess of (i) the amount of Canadian withholding tax actually imposed on such payment, over (ii) the amount of Canadian withholding tax which would have been imposed with respect to such payment if the Canadian withholding tax rate had been 15%. The Lessee shall be obligated to pay to the Owner an amount determined by solving for the value of BT in the following formula:

$$BT = \frac{ATCF (1-W)}{.267-.3(W)}$$

where:

ATCF = the Owner's after-tax detriment, as determined pursuant to the first sentence of this subparagraph (2); and

W = the rate of Canadian withholding tax imposed on such payment.

Such payment shall be made not later than 30 days after the end of the relevant year, provided that if there shall be a balance in the Suspense Account described in paragraph (i) on the date such payment would otherwise be made, the Lessee's obligation shall be abated to the extent of such balance (and the Suspense Account shall be reduced accordingly).

(3) If the Canadian withholding tax rate applicable to any Covered Payment payable after December 31, 1994 is less than 15%, the Owner will be deemed to have suffered an after-tax detriment equal to the product of (a) 26.7% and (b) the excess of (i) the Canadian withholding tax which would have been imposed with respect to such payment if the Canadian withholding tax rate had been 15%, over (ii) the amount of Canadian withholding tax actually imposed

on such payment. The Lessee shall be obligated to pay to the Owner an amount determined by solving for the value of BT in the following formula:

$$BT = \frac{ATCF (1-W)}{.267}$$

where:

ATCF = the Owner's after-tax detriment, as determined pursuant to the first sentence of this subparagraph (3); and

W = the Canadian withholding tax imposed on such payment.

Such payment shall be made not later than 30 days after the end of the relevant year, provided that if there shall be a balance in the Suspense Account described in paragraph (i) on the date such payment would otherwise be made, the Lessee's obligation shall be abated to the extent of such balance (and the Suspense Account shall be reduced accordingly).

(4) If the Canadian withholding tax rate applicable to any Covered Payment after December 31, 1994 is more than 15%, the Owner will be deemed to have realized an after-tax benefit equal to the product of (a) 26.7% and (b) the excess of (i) the amount of Canadian withholding tax actually imposed with respect to such payment, over (ii) the amount of Canadian withholding tax which would have been imposed on such payment if the Canadian withholding tax rate had been 15%. The Owner shall credit to the Suspense Account described in paragraph (i), not later than 30 days after the close of the relevant year, an amount determined by solving for the value of BT in the following formula:

$$BT = \frac{ACTF (1-W)}{.267}$$

where:

ATCF = the Owner's after-tax benefit, as determined pursuant to the first sentence of this paragraph (4); and

W = the rate of Canadian withholding tax imposed on such rental payments.

(5) For purposes of this paragraph (h) it has been assumed that the payments made to the Owner hereunder will be subject to Canadian withholding tax at the rate then applicable to rental payments. If the payments pursuant to this paragraph (h) are not subject to Canadian withholding tax, such payments shall be increased in a manner consistent with the principles set forth herein.

(i) Suspense Account.

(1) For purposes of accounting for any benefits which the Owner realizes as a result of a Capital Expenditure or a change in the Canadian withholding tax rate, the Owner shall establish a Suspense Account for the benefit of the Lessee. The credit balance existing in such account, if any, shall be increased at an annual rate of 10%, compounded semi-annually on the first day of January and July. The Owner shall deliver to the Lessee, not later than 90 days after the end of each calendar year in which there is a balance in such Suspense Account, a statement setting forth the balance of such account as of the end of the year and describing the nature and amount of any changes effecting the credit balance of the Suspense Account during such year.

(2) If a credit balance exists in the Suspense Account on January 2, 2001, the amount of such balance shall be applied to reduce rental payments payable to the Owner pursuant to Section 3 of the Lease on such date and thereafter until the balance of such account shall be exhausted. Subject to the last sentence of this subparagraph (2), if a credit balance exists in the Suspense Account on January 2, 2006, and the Lease is not extended, the Owner shall be obligated to pay to the Lessee an amount equal to such credit balance. The Owner's obligation to make such payment shall be limited to the excess of (a) the amount realized by the Owner from the sale or rental of the Equipment over (b) 20% of the Purchase Price of the Equipment.

(j) Computation. All computations required to be made as a result of indemnity claims under this Annex shall be made in the first instance by the Owner. The Owner agrees to maintain and keep all original assumptions and materials relating to the calculation of the amount of any indemnity hereunder. If requested by the Lessee, such computations, assumptions and materials shall, at the Lessee's expense, be provided to and verified by independent public accountants jointly selected by the Owner and the Lessee, and the Lessee shall reimburse the Owner for all amounts paid to outside contractors, including but not limited to attorneys, auditors or other third parties reasonably necessary to make such computations or verify such assumptions and materials.

(k) Purchase of Beneficial Interest in Units.

Provided that (1) the Lease has not been earlier terminated and no Event of Default shall have occurred and be continuing, and (2) all necessary Canadian Governmental approvals shall have been obtained, if on any Rental Payment Date the projected indemnity payments (excluding payments under paragraph (h) which are attributable to a reduction in the Canadian withholding tax rate from 15% to 10%) by the Lessee to the Owner exceed \$500,000 in the case of purchases on or before January 2, 1983, or \$200,000 in the case of purchases after January 2, 1983, the Lessee shall have the option to purchase the Owner's interest in all, but not less than all, of the Units for an amount equal to the excess of (3) the higher of the value set forth in Schedule 1 to this Annex (determined as the Rental Payment Date on which the purchase takes place) or Fair Market Value (determined in accordance with Section 14 of the Lease), plus in either case all amounts payable under the terms of the Lease on such date over (4) the principal amount payable under the Conditional Sales Agreement on such purchase date. In order for the Lessee to make a determination as to whether it wishes to exercise the option granted by this paragraph, the Lessee shall give the Owner written notice, not later than 90 days prior to any Rental Payment Date as of which it wishes to exercise the option granted by this paragraph, that the Lessee wishes to have the Fair Market Value of the Units determined, which determination shall be made at the Lessee's sole expense.

If the Lessee wishes to purchase the Owner's interest in the Units, such purchase shall take place on the Rental Payment Date next succeeding the date the Lessee has given notice to the Owner that the Lessee wishes to exercise that the Lessee wishes to have the Fair Market Value of the Units determined, which determination shall be made at the Lessee's sole expense.

If the Lessee wishes to purchase the Owner's interest in the Units, such purchase shall take place on the Rental Payment Date next succeeding the date the Lessee has given notice to the Owner that the Lessee wishes to exercise its option, and payment of the purchase price shall be made in funds immediately available at or prior to 11 a.m. local time in the city designated by the Owner and against the delivery of a bill of sale transferring and assigning to the Lessee all of the Owner's right, title and interest in and to the Units and containing a warranty against liens or claims of persons claiming by, through or under such Owner (other than liens and claims under the Conditional Sales Agreement). The Owner shall not be required to make any representation or warranty as to the condition of the Units or any other matters.

(1) Survival. The indemnities contained in this Annex shall survive the expiration or other termination of the Lease.

Schedule 1 to Annex A of Lease

<u>Rental Payment Date</u>	<u>Percentage of Purchase Price</u>
1/2/81	102.73%
7/2/81	109.69
1/2/81	112.02
7/2/82	118.47
1/2/83	120.34
7/2/83	126.34
1/2/84	127.75
7/2/84	133.27
1/2/85	134.18
7/2/85	139.18
1/2/86	139.55
7/2/86	143.97
1/2/87	143.75
7/2/87	147.56
1/2/88	146.70
7/2/88	149.85
1/2/89	148.29
7/2/89	150.71
1/2/90	146.94
7/2/90	148.22
1/2/91 and subsequent Rental Payment Dates	Termination Values set forth in Schedule C to the Lease